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Tribal Consultation            )  
with Department of            )  
Interior                        )  
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TRANSCRIPT OF PROCEEDINGS

The following is the TRANSCRIPT OF  
PROCEEDINGS, taken before Julie A. Brooks, Notary  
Public, Registered Professional Reporter, at Mystic  
Lake Casino, 2400 Mystic Lake Boulevard Northwest,  
Prior Lake, Minnesota, commencing at 9:10 a.m.,  
Thursday, January 18, 2018.

Note: The Department of the Interior corrected the  
statement of Mr. Kyle Scherer on page 4 to accurately  
reflect his affiliation.

1 APPEARANCES:

2

Department of Interior:

3

Kyle Scherer, Esquire  
Office of Assistant Secretary of Indian  
Affairs

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Paula Hart  
Director, Office of Assistant Secretary  
of Indian Affairs

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1 PROCEEDINGS

2 Whereupon, the TRANSCRIPT OF PROCEEDINGS  
3 was commenced at 9:10 a.m. as follows:

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6 MS. HART: Good morning. I think we'll  
7 get started now. My name is Paula Hart. I'm the  
8 director for the Office of Indian Gaming. And the  
9 assistant secretary has asked me to come and listen to  
10 comments on the action that's being taken.

11 The first thing that I would like to do  
12 is introduce Kyle Scherer. Kyle is a new political  
13 appointee in the front office. So I'll let him  
14 introduce himself.

15 Kyle.

16 MR. SCHERER: Sure. I'll introduce  
17 myself in a minute. Before we begin, could I just ask  
18 Chairman Flute to come up and lead us in an opening  
19 prayer.

20 MR. FLUTE: (Native language spoken.) I  
21 greet each and every one of you with a handshake from  
22 my heart this morning.

23 (Native language spoken.) We're going  
24 to talk about our lands today.

25 (Native language spoken.) Speak with a

1 good mind.

2 (Native language spoken.) Speak with a  
3 good heart.

4 With that, I'll say a prayer to the  
5 creator in my Dakota language the best I can. I ask  
6 the elders that I stand before to bear with me as I  
7 speak our language the best I can.

8 (Prayer in Native language.)

9 MR. SCHERER: Thank you very much,  
10 Chairman.

11 And many of you know Paula. I'm a newer  
12 face for many of you. Although, I see a few people who  
13 I've worked with before.

14 Just by way of background, I am  
15 [CORRECTED: Munsee-Delaware and a descendant of the  
16 Chippewa of the Thames First Nation.]

17 I previously worked on Navajo Nation  
18 for DNA - Legal Services Corporation and was most  
19 recently at the Department of Justice, where I was an  
20 appointee in the last administration and was lucky  
21 enough to be held over where I worked with the Indian  
22 resources section.

23 It is a privilege to come over to the  
24 Department of Interior where we have a lot more  
25 interaction with the tribes and individuals who serve.

1                   And this is the second consultation I've  
2 done with Interior. I recognize a few faces from some  
3 of the Tuesday consultations. We heard a lot of  
4 helpful things, honestly, in Sacramento. I hope that  
5 dialogue continues today.

6                   There's some housekeeping items. The  
7 expectation -- based on the number of people who signed  
8 up to speak, it looks like we will get through  
9 everybody. The expectation is that we conduct a  
10 four-hour consultation. We will take a quick break for  
11 Paula, myself, and the court reporter, so we can use  
12 the latrine at about the halfway point. We will add  
13 that time onto the end of the consultation just to be  
14 sure that four hours is respected. For those who are  
15 here to share your thoughts, obviously, feel free to  
16 move in and out as needed.

17                   What we're going to do -- I see a few  
18 people who are on the list to address and share their  
19 thoughts from the same tribe. So I think we're going  
20 to go through and make sure that we have one person  
21 speaking from each tribe first, and then we will come  
22 back around. And then it looks like we will have quite  
23 a bit of opportunity for some open-mike time.

24                   With that, Paula --

25                   MS. HART: Yes. I wanted to let you

1 know that this is being recorded. What we do in my  
2 job -- and you have Annette here -- what we'll do is  
3 take everybody's comments. We will have them  
4 transcribed. And what is heard today, we will put in a  
5 format so it goes all the way up to the Secretary so  
6 all of your comments are heard.

7 I'll let Kyle explain what we are doing  
8 today. But we are here on behalf of the Secretary and  
9 the deputy secretary. The associate deputy secretary,  
10 Mr. Cason himself, has asked for these consultations.

11 So everything is being recorded.  
12 Everything is going to be transcribed. We will put  
13 them in a format so that everybody all the way up the  
14 chain gets to hear what Indian Country has to say to  
15 them.

16 So I'll let Kyle explain the  
17 situation.

18 MR. SCHERER: Yeah, so John wanted to be  
19 here. Obviously, he was able to be with us in  
20 Sacramento two days ago. The Secretary is actually in  
21 Oklahoma and asked John to accompany him to introduce  
22 him to a variety of Tribal leaders who were in Oklahoma  
23 today, so that is where John is today, obviously.

24 With that, are we ready to go?

25 MS. HART: Yeah.

1                   MR. SCHERER: I should mention,  
2 obviously, this is a consultation on the 151 regs.  
3 Whenever there is a proposed rule, we'll be going  
4 through this process again to consult with the tribes.

5                   So I think the first individual is  
6 Chairman Pickernell from Chehalis.

7                   MR. PICKERNELL: Good morning. Thank  
8 you for the time. Thank you for the opportunity.  
9 Thank you for allowing us on your homelands. So thank  
10 you.

11                   My name is Harry Pickernell, Chairman of  
12 the confederated tribes of the Chehalis Reservation in  
13 southwest Washington.

14                   Today I'm just going to go over the ten  
15 questions that were given by John. So Number 1 is:  
16 The land in the trust should facilitate the purchase  
17 and fee-to-trust conversion of lands which can be used  
18 to diversify tribal economies so that tribes can obtain  
19 more diverse economic growth and provide employment for  
20 more of their members.

21                   On-reservation fee-to-trust is  
22 relatively easy to accomplish. Off-reservation  
23 fee-to-trust is the time-consuming and costly process  
24 that needs to be simplified and sped up, in our  
25 opinion.

1           The Department owes a fiduciary duty to  
2 the tribes. If, for non-gaming purposes, a sovereign  
3 determines that taking an off-reservation parcel into  
4 trust is beneficial for economic diversification,  
5 cultural, or other benefits, then the Department should  
6 not impede that process and should facilitate that  
7 process in a timely manner.

8           Since tribes are now capable of  
9 protecting and preserving trust parcels and take all  
10 jurisdictional and all steps in which in earlier times  
11 were the responsibility of the United States and since  
12 tribes no longer rely on the United States to be  
13 responsible, the criteria should be minimal.

14           There could be a reliance on the seated  
15 territory homeland concept to ensure tribes don't go  
16 too far afield geographically. The Department should  
17 not substitute its values and concerns for that of a  
18 sovereign nation.

19           There should be no different criteria  
20 for any purpose, other than for off-reservation gaming  
21 purposes. All other purposes are really  
22 non-controversial. Therefore, the tribes have  
23 determined what is in their best interest. The  
24 Department should not be the determination.

25           Land in trust reduces the friction with



1 local governments and facilitates the ability of tribes  
2 to obtain the best possible benefit from the land as  
3 the tribal government determines the best and highest  
4 uses.

5                   There are no disadvantages to trust  
6 land, as opposed to the potential of being forced to  
7 meet non-Indian views of what is best for tribes and/or  
8 non-Indian prejudices about the rights and  
9 responsibilities of tribes.

10                   Prior submissions for fee-to-trust  
11 should be grandfathered in, rather than requiring  
12 tribes to spend valuable resources and taking more time  
13 to meet new standards.

14                   It is the tribe's responsibility to deal  
15 with state and local jurisdictions on a  
16 government-to-government basis. Tribes understand the  
17 benefit of good state and local relations. Often  
18 tribes have already obtained the support of state and  
19 even local governments. Trust land and economic  
20 development have proven to be beneficial to state and  
21 local interests. And studies show tribal development  
22 has a widespread benefit for jobs to non-Indians and a  
23 lessening of the financial demands upon state and local  
24 resources.

25                   MOUs generally mean that state or local

1 entities will try to replace the taxing authority which  
2 they lose when they substitute what provides them with  
3 other revenues. Such attempts by state or local  
4 governments impede economic progress for tribes and  
5 ignore the ongoing benefits to those entities from  
6 employment, including increased sales tax revenues when  
7 tribal members have jobs and other benefits.

8 Trust lands are the equivalent of a tax  
9 base for tribes that the state and local governments  
10 already have. It should not be a requirement to have  
11 an MOU, since that issue is a government-to-government  
12 issue and not a U.S. to state and local government  
13 issue.

14 Return to the prior department program  
15 of keeping all non-gaming fee-to-trust decisions at the  
16 agency and regional levels. Those levels of the  
17 Department are much more attuned to the needs of the  
18 tribes. It is an unnecessary cost and time-consuming  
19 process to have to go to D.C. and justify a tribe's  
20 need a second time. And it also costs the U.S.  
21 valuable resources that could be better used to help  
22 tribes.

23 Thank you for your time. Thank you so  
24 much.

25 MR. SCHERER: Thank you, Chairman.

1                   Next, we have Councilman Metoxen from  
2 Oneida.

3                   MR. METOXEN: Good morning. My name is  
4 Kirby Metoxen, councilman from the Oneida tribe.

5                   The Oneida Nation of Wisconsin is  
6 pleased to be here with you today and share our views  
7 concerning the Department of Interior's draft  
8 amendments to 25(c) of our Part 151 and the ten  
9 questions outlined in the tribal leaders letter dated  
10 December 6, 2017.

11                   As you may know, our nation is  
12 originally from this area which now comprises Upstate  
13 New York. After the revolutionary war, we lost nearly  
14 5,000,000 acres of ancestral homelands to illegal land  
15 transactions, despite treaty promises from the United  
16 States that we would forever be secure in our  
17 homelands.

18                   In the 1820's our people began to  
19 relocate to the territory which became the state of  
20 Wisconsin. The state of Wisconsin came to be in 1838.  
21 We entered into a treaty with the United States which  
22 established a 65,400-acre Oneida Indian reservation.  
23 And the 65,400 acres was to the 654 Oneidas that were  
24 relocated from New York to the Wisconsin area.

25                   For nearly 200 years, we have lived here

1 and called this our home. While the land mass of the  
2 reservation consists of 65,400 acres, we lost ownership  
3 of most of our land as a result of allotment and fee  
4 patenting, presumed through the Dawes Act. Now about  
5 22 percent of our reservation lands are held in trust  
6 by the United States, and efforts are underway to  
7 reacquire title to the remaining parcels.

8           The fee-to-trust process, therefore, is  
9 very important to our nation and its members. In our  
10 view, the primary purpose of trust acquisition is to  
11 restore the alienable status of the land and revive the  
12 federal protection of title to the land.

13           When land is placed in trust, the land  
14 cannot be sold, leased, or encumbered without tribal  
15 approval. Thus, the fee-to-trust process creates a  
16 protected land base and provides a safe environment to  
17 nurture and promote Oneida culture, economy, health,  
18 and political infrastructure.

19           Returning the land to its original  
20 status as alienable to forever be held by the United  
21 States for the benefit of the tribe ensures that tribal  
22 investments within the reservation will never be lost.

23

24           The mission of the Oneida Nation is to  
25 strengthen, protect our people, reclaim ownership of

1    our reservation land, and enhance the environment by  
2    exercising our sovereignty. Each aspect of this  
3    mission is promoted by placing land into trust.

4                    The current fee-to-trust process is  
5    working. And the factors considered under the current  
6    regulation are appropriate. Interested parties in the  
7    fee-to-trust application have an opportunity to  
8    comment. The Bureau of Indian Affairs considers these  
9    comments in determining whether to acquire land into  
10   trust. If the Bureau decides to acquire land in trust,  
11   the resulting notice of decisions addresses the  
12   comments. Interested parties then have the right to  
13   appeal. The process, thus, ensures that concerns of  
14   local municipalities and other interested parties are  
15   taken into account.

16                   Any changes to these processes should be  
17   centered on deficiency and allocating resources to  
18   defend trust decisions and litigation.

19                   As proposed, the changes to 151.12, the  
20   Department would reinstate the 30-stay before taking  
21   land into trust after a positive determination has been  
22   reached. This change in policy simply promotes an  
23   environment of litigation rather than cooperation.

24                   Such a policy also creates an additional  
25   finaNCAIl burden on tribes, exploiting tribes to the

1 continued obligations to pay property taxes on lands  
2 deemed eligible to be placed into trust. Truly, this  
3 proposed change creates a situation where tribes would  
4 be required to underwrite the litigation efforts being  
5 waged against them.

6 The proposed amendment 151.12 would have  
7 a negative impact on the Oneida Nation for trust  
8 acquisition of lands located on or contiguous of the  
9 Oneida reservation.

10 We feel that the proposed amendments to  
11 151.11 may serve as a prelude to future changes to the  
12 regulations concerning the trust acquisitions of lands  
13 located within our continuous reservation.

14 We are not convinced that fragmenting  
15 the process will lead to greater consideration in the  
16 deed-to-trust application. At the same time, we are  
17 concerned that the additional hurdles created by the  
18 proposed changes will lead to greater cost and delays  
19 in the already lengthy process.

20 While we are grateful to the Department  
21 for its desire to find ways to limit the finaNCAl  
22 obligations tribes must accrue simply to reclaim title  
23 to their homelands, the additional finaNCAl  
24 obligations that will be incurred by tribes, should  
25 this rule go into affect, far outweigh any benefit

1 suggested.

2 In closing, Oneida believes the  
3 fee-to-trust process is appropriate and does not need  
4 to be altered.

5 MS. HART: Thank you.

6 MR. SCHERER: Thank you, Councilman  
7 Metoxen.

8 Next is Chairman Taylor from  
9 Saint Croix.

10 MR. TAYLOR: My name is Lewis Taylor.  
11 I'm the Chairman of Saint Croix. And, you know, I  
12 really have been, you know, an advocate for land in  
13 trust, you know, with the regulations made by the  
14 tribes. I don't think the Bureau has any right to  
15 impose upon us, you know, regulations that restrict  
16 land-into-trust. We have a treaty right. Our treaty  
17 spells it out.

18 And all of a sudden, you know, over the  
19 course of the past few years, there's been, you know, a  
20 lot of savages on the trust land. And, you know, the  
21 old saying is that you know, the calvary is still among  
22 us.

23 I think, for me, to look at regulations  
24 that are very -- that impose a legal hardship on my  
25 tribe, you know, I'm going to object. That's why I'm

1 here.

2 I think, you know, as Indian people, you  
3 know, we have lost too much. We need to defend what  
4 little we've got left. And I think the land-into-trust  
5 is an issue for our tribe because we were forced -- we  
6 were forced to live on a reservation scattered through  
7 three counties in Wisconsin. You know, prior to that,  
8 we owned Wisconsin, you know.

9 All of a sudden, we've got this  
10 restricted type of land, that land base, where, you  
11 know, it really decimated my people. We couldn't fish.  
12 We couldn't hunt. You know, we couldn't, you know, do  
13 a lot of things that we were dependent upon, what the  
14 creator gave us for our subsistence. That's why a lot  
15 of our people died off.

16 Obviously, you know, there's a  
17 humanitarian effect to all of this land-into-trust  
18 issue. In respect to that, I think the Bureau should  
19 listen to us and make the right determination. So I  
20 think, to me, you know, that's why I'm here. I'm here  
21 because these damages that have been done over the past  
22 few years by the BIA, certainly, is not for us.

23 You know, we need a lot of environment.  
24 We need land. We need economic development. And we  
25 need to prosper as people in America. I think, to me,



1 we need a lot of freedom, and this is one of the  
2 freedoms that we need to preserve. So bewitch (sic).

3 MR. SCHERER: Thank you, Chairman  
4 Taylor. Next we'd like to hear from President Buck  
5 from Prairie Island.

6 MS. BUCK: Good morning. I'm Shelley  
7 Buck.

8 Have any of you been down to Prairie  
9 Island to see where we're at?

10 MS. HART: No, I haven't.

11 MS. BUCK: We're an actual island.  
12 We're an island that half of our land was flooded in  
13 the '30s by a lock and dam the federal government  
14 allowed to go through.

15 The federal government also allowed a  
16 nuclear power plant with 30-40 plus storage units  
17 filled with nuclear fuel sitting on our island 600  
18 yards away. For golfers, it is a long par 5.

19 We also have a railroad track that the  
20 government allowed that goes through our reservation  
21 that blocks our one reliable way on and off multiple  
22 times throughout the day.

23 So, for us, the only acquisition we can  
24 have is off-reservation. We have no other choices.  
25 Trust me, if we could have land that was attached to

1    our current res, we would. For us, the off-reservation  
2    really hits hard on us.

3                    All these changes do is develop a new  
4    path for gaming acquisition that just adds more  
5    bureaucracy and hoops for tribes to jump through. It  
6    gives the Interior an easy way to deny off-reservation  
7    fee-to-trust acquisition. IRA already prohibits  
8    off-reservation gaming to lands acquired after 1988  
9    with a few exceptions. There is nothing, I repeat  
10   nothing, in IRA that gives the Secretary authority to  
11   treat gaming acquisition differently. These changes  
12   actually act to diminish tribal sovereignty.

13                   With the connection to the land, first  
14   where was that concern when the land was stolen from  
15   us? Where was that concern for our connection to the  
16   land then? This requirement is problematic, especially  
17   for tribes that faced removal or where tribes shared  
18   lands.

19                   Tribes would have to prove they could  
20   effectively exercise governmental and regulatory  
21   jurisdiction over land, and this puts Interior in a  
22   position to determine whether a tribe's exercise of its  
23   inherent jurisdiction is sufficient.

24                   The 30-day delay is just to make tribes  
25   wait longer to have land put into trust.

1                   And last, these proposed changes are  
2                   supposed to give us more certainty in land-into-trust  
3                   before we extend more resources, but the Trump  
4                   administration has already given his desire to limit  
5                   tribe's ability to take more land into trust,  
6                   especially for its gaming purposes.

7                   (Native language spoken.) Thank you.

8                   MR. SCHERER: Thank you, President Buck.  
9                   Next President Holsey from Stockbridge-Munsee.

10                  MS. HOLSEY: Good morning. Good morning  
11                  everybody. Thank you for allowing me to be here on  
12                  behalf of the Stockbridge-Munsee community. As he  
13                  said, my name is Shannon Holsey. I'm the president of  
14                  the Stockbridge-Munsee tribe.

15                  I don't want to reiterate some of the  
16                  things that have already been discussed, but I do think  
17                  it is important to expound on them, because I think  
18                  this is a great time of uncertainty for all of us.  
19                  There is great concern with regards to a lot of the  
20                  things, from the logistics to the way that consultation  
21                  was established, to the geographical locations of where  
22                  they were, to how they were focused on urban areas  
23                  where it didn't give a lot of access to a lot of other  
24                  Natives.

25                  There are 567 federally-recognized

1 tribes, and we all need to have input because these are  
2 issues that are important to all of us.

3           One of the areas I'd like to talk about  
4 is the benefit of the expedited denial process for  
5 land-to-trust. The Department proposed to justify some  
6 of these proposed changes by claiming that establishing  
7 a new two-step process to quickly turn down trust  
8 applications is a benefit. The claim that this is a  
9 process that would spare tribes the time and expense of  
10 preparing all necessary elements of land-into-trust  
11 application that is likely to ultimately be denied is a  
12 dubious benefit that appears to reflect a patronizing  
13 attitude toward tribal governments that assumes they  
14 are not sophisticated enough to properly weigh the  
15 merits of the land acquisition requests.

16           In our experience, decisions by a  
17 federally-recognized tribe to seek land are not  
18 undertaken likely or impulsively. They are a product  
19 of extensive planning, thought, and consideration  
20 before ever being submitted for review. To our  
21 knowledge, no tribal governments are asking the  
22 Department to implement an expedited denial process to  
23 protect us from our own decision-making. In fact, the  
24 only entities we are aware of that have sought such a  
25 policy are some non-tribal interests who have fought

1 tribal land acquisitions and economic development no  
2 matter what form it takes.

3           The other part of it is the lack of the  
4 proposal on the appeal of the expedited negative  
5 denial. The draft contains no detail on how tribes may  
6 appeal any negative decision for land trust  
7 acquisition. While the proposed regulations specify  
8 what criteria will be used for making such a decision,  
9 they provide no information or process on how a tribe  
10 can appeal a negative decision if they do not agree  
11 with it.

12           The Stockbridge-Munsee Indian community  
13 believes that this would give significantly and largely  
14 unaccountable power to decision-makers in Washington to  
15 reject applications wholesale with no opportunity short  
16 of litigation to challenge their position.

17           The Department of Interior has a trust  
18 responsibility to tribes, not local governments. Based  
19 on the language of the proposed regulations, is it fair  
20 to question whether the Department has forgotten it is  
21 a trust responsibility that is to the  
22 federally-recognized tribes, not local units of  
23 government.

24           Significant portions of these proposed  
25 changes appear to be written as though they were

1 intended to meet the desires of local governments, not  
2 the needs of federally-recognized tribes. Tribes are  
3 sovereigns and government-to-government relationships  
4 with the United States. Local and municipal  
5 governments are subs of the state governments.  
6 Throughout the proposed changes, the concerns of the  
7 local municipal governments appear to be given  
8 increased weight without the needs of the tribes.

9           In the draft requirement of Part 151.11,  
10 Subsection 8, Part 111, provides that the Department  
11 will now require tribal applicants to provide evidence  
12 of mitigation of local community impacts, including  
13 inclusion of any intergovernmental agreements or an  
14 explanation of why agreements do not exist. The  
15 practical effect of this and the requirement is to give  
16 local governments a near veto power over tribal land  
17 acquisition.

18           The experience of tribes nationwide has  
19 shown that obtaining such agreements from all parties  
20 involved is often difficult, if not impossible.  
21 Additionally, many situations exist where some local  
22 governments support trust land acquisition, while  
23 others in the area do not. For example, a township in  
24 a county might support tribal acquisition, while a town  
25 within the borders may not. How would the Department

1 deal with these conflicting viewpoints?

2           Furthermore, it is undeniable that, in  
3 certain parts of the country, long-standing differences  
4 exist between tribes and some local units of  
5 government. These animosities often have more to do  
6 with decade-old friction, as opposed to current issues.  
7 That can present insurmountable obstacles in reaching  
8 cooperative agreements.

9           The changes in your draft proposal would  
10 hold tribal progress hostage to these local disputes  
11 and fly in the face of the trust responsibility the  
12 federal government has towards tribes. Ironically, the  
13 only entity that is left out of the expanded role or  
14 requirement for intergovernmental agreements in this  
15 draft regulation is other tribal governments, precisely  
16 the entity in which the federal government does owe a  
17 trust obligation and one which receives no mention in  
18 the proposed change.

19           Finally, as many have already spoken to,  
20 the imposition of the 30-day minimum waiting period  
21 before the land is placed into trust is extremely  
22 detrimental to tribes. Perhaps, for  
23 Stockbridge-Munsee, the worst single aspect of the  
24 proposed regulation is the requirement that land being  
25 placed into trust for any purpose has at least a 30-day

1 delay for Department approval, as specified in proposed  
2 Part 151.12, Subsection C(2) and in 151.12, D(2).

3           In the view of the Stockbridge-Munsee  
4 Indian community, the sole discernible purpose of the  
5 provision is to make tribal trust land acquisitions  
6 more vulnerable to litigation and to further the unit  
7 governmental responsibility to other private parties.  
8 In no way can this requirement be reviewed as  
9 advantageous to any tribe and, in fact, will serve to  
10 dramatically increase litigation by hostile parties on  
11 all tribal land acquisitions.

12           The ill effects of litigation encouraged  
13 by proposed Parts 151.12 and 151.12, Part D, would  
14 include creating disincentives for financial institutes  
15 in providing funding for tribal land acquisitions due  
16 to litigation risk and virtually guarantee that every  
17 tribal land-into-trust acquisition will be challenged  
18 in court at great expense to tribes and substantially  
19 increase the cost incurred by the American taxpayer to  
20 fund the Department's defense of its actions.

21           The inclusion of this provision benefits  
22 only the opponents of the tribe. It is a gross  
23 abrogation of the trust obligation of the federal  
24 government to protect interests and the trust  
25 obligation of federal government and to spend the



1 taxpayer's money wisely.

2           It is nearly incomprehensible that the  
3 Department that professes to be committed to tribal  
4 sovereignty in its trust obligation would even  
5 contemplate such a measure. It must be immediately  
6 removed from the proposal.

7           The Stockbridge-Munsee community urges  
8 the Department to quickly withdraw this ill-conceived  
9 and apparently ill-intended set of regulations and,  
10 instead, focus on implementing policy initiatives with  
11 input from all tribes and that the real benefit be that  
12 to the American Indian.

13           Thank you.

14           MR. SCHERER: Thank you, President  
15 Holsey.

16           Next is President Cleveland from  
17 Ho-Chunck.

18           MR. CLEVELAND: Hello. (Native Language  
19 spoken.) So I recognize being in front of you here.  
20 Thank you for coming over this way.

21           I'd like to say thanks for the prayer.  
22 It is well appreciated. We rely on talking with the  
23 Great Spirit in all the endeavors that we do in our  
24 everyday living and being grateful for what we have.  
25 So it is really appreciated.

1                   I'll say a word of thanks to the  
2 Department of Interior or the Bureau of Indian Affairs  
3 for expanding their sessions to bring it out more into  
4 Indian Country to listen to the concerns that we have.

5                   But I was thinking that you have a house  
6 full of people here. And, even though that this is  
7 something that we requested at NCAI, this young man is  
8 telling us we only have four hours to speak to you,  
9 when there may be a lot of people that are going to be  
10 left out because of that.

11                  To us, this is a very important topic to  
12 be talking about, and we don't take it lightly and come  
13 over here and speak as fast as you would like us to get  
14 our point across to why we think this is a bad idea.

15 I'd just like to make note of that, as I proceed here.

16                  And my name is Wilfred Cleveland. I'm  
17 the president of Ho-Chunk Nation. We are across the  
18 big river here in what is now the state of Wisconsin.

19                  I have been a tribal member all my life  
20 and lived there all my life. It was a struggle for my  
21 ancestors to live there, and we've been removed time  
22 and time again from our homelands there. We originated  
23 up in the Green Bay area in what was referred to as Red  
24 Banks. We've been living in those lands since the  
25 beginning of time, until the coming of the white man

1 and the removals that began to happen because they seen  
2 how beautiful and how valuable the land is.

3 But our people, we have a stewardship  
4 responsibility over these lands. So every time that  
5 there was a removal, there was a time of returning back  
6 to our homelands. So the federal government finally  
7 gave up and gave us trust lands. We don't even have a  
8 reservation. Everything that we do acquiring lands is  
9 off-reservation because we don't have a reservation.

10 So I was liking it when this IRA -- when  
11 reading about it and the purpose of that. And it  
12 seemed like, over the years, that this has been  
13 changing from the original intent of why we are able to  
14 acquire lands, our lands, back.

15 And so I was -- I come here, it seems  
16 like, with more questions than answers. We will be  
17 sending our comments in by the due date, but I thought  
18 it was important for me to come over here and make a  
19 statement and ask some questions, not that you would  
20 know the answers, because there are higher-ups.  
21 According to what Ms. Hart referred to earlier, there's  
22 about four levels above you that answer the questions  
23 that we have. You have come here to take notes for  
24 them, I'm assuming.

25 So one of the questions I have is: Why

1 is BIA trying to make it more difficult for us to put  
2 land into trust, when the original intent of the IRA  
3 was to stop the loss of land by Indians and returning  
4 land to Indians? Now, since that time, they put a lot  
5 of restrictions or requirements into that. An example  
6 of that was mentioned here already several times, this  
7 30-day period of waiting. And why? I guess, I have a  
8 lot of why questions to what is trying to be taking  
9 place.

10           That brings back one of the questions.  
11 The 30-day appeal process is unnecessary. Anyone who  
12 opposes has up to six years to appeal, and within that  
13 six years, they might even realize it is a good thing.  
14 It is a good thing for them that we put this land into  
15 trust. They might be benefiting from it.

16           Just like everything that was said  
17 already, there may be reasons from way back just  
18 because some white people don't like Indians and they  
19 don't want us to have these lands. That's a concern.  
20 And it makes it difficult for a tribe to develop that  
21 land if someone, a government of some sort, appeals it  
22 and we're in litigation and no one is going to want to  
23 do anything with that land. It could go on for years  
24 and years, a lot further than that six years that's  
25 there or a lot longer than that 30 days. So those are

1 the kind of concerns that we come here with.

2                   How were these questions -- these ten  
3 questions that were put, what kind of determination was  
4 made for us to be answering those kind of questions to  
5 see how this land is going to be put into trust for us?  
6 It is almost like what I would refer to as like a  
7 two-edged sword for us to be answering these kinds of  
8 questions here.

9                   And going back to the basic reason why  
10 land is being put into trust, like I said earlier, so I  
11 wonder why there wants to be a change in this process  
12 that we have now.

13                   And another part of that is why do we  
14 have to send everything straight to central? Why was  
15 the region taken out? If we have questions about the  
16 status of our application, who do we go to? We have to  
17 go all the way to D.C. to find out what the status is  
18 on this. Why don't you just leave it here within the  
19 region where we have a good working relationship with  
20 the people there?

21                   And another question that I have is:  
22 This consultation that you are doing here, what do  
23 these non- -- I guess, like, counties, townships, what  
24 kind of impact do they have in what these questions are  
25 that are being asked of us and determining if there's

1 going to be a change in how the process is going to be  
2 moving forward?

3 I would suggest to just go back and read  
4 the original intent of the IRA and take it from there.  
5 And how we want to use our land that we acquire is to  
6 make our determination for our people stronger, better,  
7 it should be up to us to make that and try to make this  
8 as smooth as we can trying to acquire the land.

9 We're not going to be asking for the  
10 whole state of Wisconsin, even though we should, and  
11 so -- but what we need for our people is to move around  
12 freely, to be able to do what they need to do on the  
13 lands. Because no matter what happens, these people in  
14 the outside governments that are around us, they're  
15 going to benefit. They will benefit by what we do.

16 Because we are a people that have learned to  
17 adapt to our surroundings. That's why we're still  
18 here. We still have our ceremonies. We still have our  
19 language. We still have our ways of life that we have.  
20 And we just progress along with our surroundings.

21 Like I mentioned earlier, with this  
22 prayer, with our ceremonies, that is what we thrive on.  
23 And just to make our living better from way back when  
24 our government began, when we lived in wigwams and  
25 moving forward into living and to adapting and living

1 in tar paper shacks and moving forward progressing with  
2 our surroundings until we came this far. Now the  
3 federal government is trying to restrict us from living  
4 life the way our ancestors made in their ceremonies.

5 So congress enacted the IRA to restore land  
6 bases and restrict the taking of lands from tribes.  
7 Many lands given to the Ho-Chunk in an allotment were  
8 seized through illegal taxation or for sale by local  
9 counties and non-Indians.

10 One of the things to think about is,  
11 with this new administration that was coming in here,  
12 they talked about streamlining. But in the process of  
13 making it and streamlining it, they really make life  
14 difficult for everyone. It is quite obvious. I don't  
15 want to go too far into that.

16 The spirit of the IRA was well intended.  
17 The intention of the IRA was to create a mechanism to  
18 provide communal lands to Indian people that reversed  
19 years of Indian policy that decimated our land base and  
20 destroyed our culture. The IRA allowed lands to be  
21 returned to tribal hands, rather than individual  
22 allotment tracks. The DIA is still dealing with the  
23 consequences of the allotment era today in the forms of  
24 fractionation and probate.

25 The tribe is able to create economical

1 opportunities on land afforded to us through the IRA.  
2 With the income generated, we are able to provide for  
3 the general welfare of our tribal members living both  
4 on and off our lands. We are able to pass laws that  
5 govern our people and regulate activities on our lands.  
6 Each amendment to the CFR 151 strays further and  
7 further away from the original intention of the IRA.

8           The proposed revisions are not in the  
9 spirit of what congress intended when passing the IRA.  
10 Restricting the ability for tribes to place lands into  
11 trust is contradictory to the 73rd congress goal of  
12 restoring tribal homelands.

13           Something that often gets overlooked is  
14 that the IRA is one of the few post World War I  
15 legislations regarding Indian policy. A great number  
16 of warriors fought for the U.S.A. abroad. Many of our  
17 Ho-Chunks did that. I feel that part of why this  
18 legislation was passed was because of the sacrifices of  
19 those men. The federal government was trying to right  
20 their wrong when trying to deal with Indian lands.

21           I'd like to express these kinds of words  
22 here at this time. And once again, I would like to  
23 thank you for your time. (Native language spoken.)  
24 Thank you for listening.

25           MR. SCHERER: Thank you, President



1 Cleveland.

2                   Could we now hear from Assistant Tribal  
3 Administrator Blanchard from Shakopee.

4                   MS. BLANCHARD: Shakopee will reserve  
5 verbal comment today, and we'll provide written comment  
6 forthcoming.

7                   MS. HART: Thank you.

8                   MR. SCHERER: Could we hear from the  
9 director of real estate for the Mille Lacs Band.

10                  MS. DONAHUE: Good morning. My name is  
11 Bridge Donahue. I'm with the Mille Lacs Band of  
12 Ojibwe.

13                  I would like to thank all the tribal  
14 leaders who spoke before me and all of their comments.

15                  The proposed addition of criteria for  
16 the tribes' connection to the land and whether a tribe  
17 can effectively exercise its governmental and  
18 regulatory powers at the site is especially disturbing.  
19 How much of a connection is sufficient? How effective  
20 must the tribal government be?

21                  The objective of off-reservation  
22 acquisitions for economic development projects to  
23 similar criteria required for off-reservation gaming  
24 acquisitions makes no sense. Any increased scrutiny of  
25 gaming acquisitions would stem from 25 USC 2719's

1 limitations on and exceptions for gaming on trust lands  
2 acquired after October 1988. The IRA has no such  
3 limitations.

4           These proposed fee-to-trust changes  
5 would add huge obstacles to tribal economic development  
6 projects. And this comes at a time when DOI is holding  
7 secret meetings with industry groups promising to relax  
8 NEPA, to help promote economic development on public  
9 lands for non-Indian interests.

10           Loosening Indian trader regulations and  
11 NEPA while tightening fee-to-trust regulations makes no  
12 sense if the goal is to help tribal economic  
13 development and reduce regulatory burdens on tribes.  
14 Combined, the changes would help non-Indians with their  
15 economic and energy development projects in Indian  
16 Country and elsewhere but hinder a key program that  
17 tribes need to facilitate tribal economic goals.

18           Creating a two-phase Secretary review  
19 and approval process for discretionary off-reservation  
20 trust acquisitions so that certain resource application  
21 information would be required only if the application  
22 meets the threshold criteria to reach the second phase  
23 of review and approval. What are the threshold  
24 criteria? This needs to be defined. Is there going to  
25 be a time limit for this review process? This will,

1 ultimately, slow down the fee-to-trust process time.

2           The ASIA (phonetic) admits NEPA is a  
3 lengthy and costly process. NEPA is another hurdle to  
4 the fee-to-trust process with potential significant  
5 delays in itself. By postponing the date that NEPA can  
6 be initiated, any additional environmental work, if a  
7 CATEX is rejected and an environmental assessment is  
8 ordered, it cannot and will not be made apparent in the  
9 fee-to-trust process, therefore prolonging the ultimate  
10 notice of decision.

11           NEPA is supposed to be performed  
12 pre-decisional. There is no point to have the  
13 application partially approved prior to the NEPA when  
14 NEPA is just another step where the application can  
15 still be denied.

16           Distinguishing acquisitions for gaming  
17 from off-reservation trust acquisitions for other  
18 non-gaming purposes? What is the purpose? Will there  
19 be two wait lists for the review of the Secretary?  
20 Will the application still be reviewed in the order of  
21 receipt? There's already a process 25 CFR Part 292 in  
22 place for extra requirements for off-reservation gaming  
23 applications.

24           Whether the acquisition will facilitate  
25 the consolidation of tribal land holdings and reduce

1 checkerboarding patterns and jurisdictions.  
2 Checkerboard reservations often have land holdings that  
3 way because they did not have any boundaries defined by  
4 any treaty. These tribes are attempting to consolidate  
5 their lands with every fee-to-trust application that is  
6 filed. They should not be scrutinized for putting a  
7 property into trust that is 10 miles away from current  
8 reservation land because there is another fee property  
9 only 2 miles away. This regulation criteria is  
10 unnecessary and should be eliminated from the final  
11 regulation updates.

12                   The 30-day delay. This is pointless.  
13 There's already a 30-day publication period that needs  
14 to be complied with. This is a redundancy and should  
15 not be put back into the regulation. Statute of  
16 limitations for federal court is six years, anyway. So  
17 what is the point of adding a 30-day delay?

18                   Explicitly stating that the Department  
19 will comply with court orders to take land out of  
20 trust. This is excessive language that, when read by  
21 opposition to the tribe's application could add a  
22 potential amount of appeals and court cases in an  
23 attempt to reverse the Secretary's decision. Has one  
24 of these cases ever happened? If it has, did the  
25 Department comply? If the Department complied, then

1 why add this to the regulations?

2 Identification of the unemployment rate  
3 on the reservation. Tribes without current minimal  
4 resources could be hindered by any expensive studies  
5 that need to be required. What is the threshold for an  
6 analysis? Part 292 already requires anticipated  
7 impacts on the economic development, income, and  
8 employment of the surrounding community, so this is  
9 redundant to list in Part 151.

10 Regarding the MOUs, as you may or may  
11 not know, Mille Lacs County is in huge opposition to  
12 us. They canceled our law enforcement agreements two  
13 years ago. We have not had any -- we had an Uncuff Our  
14 Cops rally at the capitol a few months ago, because our  
15 tribal police really have no authority in Mille Lacs  
16 County because they don't recognize us.

17 Any kind of agreements with Mille Lacs  
18 County is off the table. For us -- for the Department  
19 to look at us and scrutinize whether or not we have an  
20 MOU would be unfair and unjust because there is no way.  
21 We've been in negotiations for two years, and they will  
22 not recognize our boundary. They will not recognize  
23 us. So that would be extremely unfair for us to have  
24 that as part of the review process.

25 Thank you for your time and

1 consideration.

2 MR. SCHERER: Thank you very much. We  
3 have another representative of Prairie Island, who is  
4 the last individual who signed up to present comments.  
5 This is the assistant secretary treasurer, Ms. Urich or  
6 Urich.

7 MR. FLUTE: Excuse me, I just signed in.

8 MR. SCHERER: We are going to open it  
9 up.

10 MR. FLUTE: There was online  
11 registration. I had a confirmation.

12 MS. HART: Okay. We're going to open it  
13 up, so I will --

14 MR. SCHERER: We are happy to open with  
15 you if you would like to speak.

16 MR. FLUTE: (Native Language spoken.)  
17 And that's my connection to the land. That language  
18 that I just spoke.

19 Before I read some comments, I want to  
20 say that I am a little dissatisfied with Secretary  
21 Zinke's proposed changes and you representing him. I  
22 would speak to him if he were here the same. I'm going  
23 to speak to you respectfully, to your positions.

24 The consultation between the Sisseton  
25 Wahpeton Sioux tribe is based on our treaties, the U.S.

1 Constitution. Article 5, treaties are the law of the  
2 land, federal statutes, executive orders, presidential  
3 memorandums. Your trust responsibility is to all  
4 tribes and the inherent sovereign authority of our  
5 respective tribes.

6           So the Sisseton Wahpeton Sioux tribe  
7 disagrees with the entire provisions, proposed changes  
8 to 25 CFR 151, the parts that are being recommended for  
9 changes, for all the reasons that were recently and  
10 previous before we were spoken. We concur with those.

11           But, also, in addition, for consultation  
12 to be meaningful, the consultation must be timely. It  
13 means the Department of Interior doesn't initiate  
14 consultation after drafting proposed changes to  
15 important regulations, but well before. It should be  
16 well before.

17           Here, the secretary has unilaterally  
18 established an agenda and unilaterally drafted proposed  
19 regulations without ever identifying the need for the  
20 proposed change. The secretary must initiate  
21 consultation to discuss whether any changes to  
22 regulatory language, any language, is even necessary.  
23 In other words, the secretary must first consult with  
24 tribes about the underlying concerns, not the perceived  
25 solution.

1                   Sharing information -- consultation  
2 requires sharing information. The Department has  
3 provided no information about the need for change to  
4 off-reservation regulations. Mind you, I am a  
5 reservation tribe or a treaty tribe, where I have great  
6 respect to the other tribes that are recognized by the  
7 federal government. We need to collaborate about the  
8 perceived problem or difficulty and then, if necessary,  
9 we can discuss an agenda.

10                   Here, the Department is saying that  
11 consultation means the Indian tribes are treated no  
12 different than any member of the public who is invited  
13 to comment on proposed regulations. We are not cities.  
14 We are not states. We are tribal Nations. We are  
15 sovereign Nations. I think that needs to be clarified  
16 with the Secretary.

17                   Honestly, consultation is meaningless  
18 without honesty. In October, I received the letter  
19 stating that this consultation was going to be about  
20 off-reservation lands. Then in December, we get one  
21 that says they are going to be talking about  
22 on-reservation lands. So I think the Department needs  
23 to clarify what their intentions are, because this  
24 looks -- is it heads or tails, or is it both? I don't  
25 know.



1           So in conclusion, I'm here today to  
2     listen and learn why the Department has set an agenda,  
3     why the Department is proposing changes to these  
4     regulations. It is not possible to consult without  
5     that information.

6           Looking at a couple of these proposed  
7     changes and questions that the Secretary, who is  
8     representing President Trump, is asking, the main one  
9     that disturbs me the most is the historical attachment  
10    you have to the land. That is a slap in the face to  
11    every single one of us. These original lands were  
12    ours. We were here first.

13           Those treaties that were established,  
14    that was the law of the land. Not all of those  
15    treaties were upheld, and there were some that were  
16    abrogated and some that, like with the Great Sioux  
17    Nation, we were lied to. My tribe was lied to.

18           Half of Minnesota, this is (Native  
19    Language spoken.) We gave up a lot, half of Minnesota,  
20    all of Minnesota, eventually. You look at North  
21    Dakota, South Dakota, they bear the names of Dakota  
22    people. These towns bear the names of our ancestors,  
23    Winnebago, Neshoba, Dakota. They all have names of our  
24    people. We might be different by language, but we  
25    share universal commonalities, compassion, respect for

1 the land.

2                   So I urge you -- and I say this humbly,  
3 and I say this respectfully to Secretary Zinke. I  
4 understand he was a Navy SEAL. I'm an Afghanistan  
5 veteran. Being in Afghanistan for a year, I learned  
6 how valuable to the good citizens of Afghanistan, not  
7 the Taliban, but those local nationals, why their lands  
8 were important. Our own Secretary shouldn't have to  
9 ask what our historical values are to the lands we are  
10 going to put into trust. (Native Language spoken.)

11                   MR. SCHERER: Thank you, Chairman  
12 Flute.

13                   MR. VAN NORMAN: Hi there. You had  
14 another sheet out front. I signed up.

15                   MS. HART: You are on top.

16                   MR. VAN NORMAN: Thanks. I'm Mark Van  
17 Norman. I'm a member of the Cheyenne River Sioux  
18 tribe. I'm here today as counsel to the Oglala Sioux  
19 tribe. We have our council here from the Oglala Sioux  
20 tribe, tribal council, and President Weston has a  
21 letter that we'll deliver to you.

22                   And the Oglala Sioux tribe is a  
23 federally-recognized tribe, one of the tribes of the  
24 Great Sioux Nation, signatory to the 1851 and 1868  
25 treaties. Our preliminary comment is no regulatory

1 amendments are needed at this time. The Secretary  
2 should restore authority to BIA regions to acquire  
3 land-in-trust on behalf of Indian tribes and individual  
4 Indians.

5           The Secretary should mandate that the  
6 BIA regional directors prioritize and expedite the  
7 acquisition of Indian lands for tribes and individuals  
8 to enhance, restore to justice, promote Indian  
9 self-determination, support self-government, encourage  
10 economic development, foster cultural survival and  
11 community wellness.

12           Under our 1851 and 1868 treaties, the  
13 Great Sioux Nation reserved 21,000,000 acres of land in  
14 western South Dakota from the low water mark on the  
15 east bank of the Missouri River as our permanent home  
16 and 44,000,000 acres of land in Nebraska, Colorado,  
17 Wyoming, Montana, and North Dakota that is unseated  
18 Indian territory from and among our original territory.

19           The United States took many of these  
20 lands in violation of the treaties, 7,000,000 acres in  
21 the Black Hills taken, in 1888, 11,000,000 acres to  
22 facilitate statehood for North and South Dakota, and  
23 another 6,000,000 acres thereafter. So it looks like  
24 about 70,000,000 acres were taken from the Sioux Nation  
25 throughout that period.

1                   In the Meriam Report, which led to the  
2                   enactment of the Indian Reorganization Act, the United  
3                   States recognized that too much economic damage had  
4                   been done to Indian tribes by taking these lands. In  
5                   accordance, the Indian Reorganization Act was a  
6                   remedial statute to return to promoting self-government  
7                   and economic revitalization for Indian tribes. It is  
8                   to promote Indian self-determination and preserve  
9                   Indian sovereignty, promote tribal self-government, in  
10                  the delivery of tribal government services, including  
11                  housing, education, community wellness, cultural  
12                  preservation. It fosters tribal corporations, business  
13                  and economic development, and the restoration of Indian  
14                  homelands.

15                  So these broad purposes provide the  
16                  background for any regulation, and regulations should  
17                  serve to help tribes to reacquire their homelands. The  
18                  purpose of the Act prevents the loss of Indian lands,  
19                  secure Indian lands, restore federal lands to Indian  
20                  tribes, restores Indian lands, mineral rights, and  
21                  waters to purchase relinquishment and exchange  
22                  assignment with state and local taxation, promote  
23                  economic development, forestry management, range  
24                  management, protection of the soil, proclaim Indian  
25                  reservations, promote Indian education and healthcare

1 and preserve the existing rights of Indian tribes.

2           So the objective of the regulations, as  
3 they currently are and any future regulations, should  
4 be to carry out the Indian Reorganization Act's  
5 remedial purposes. It should take steps to achieve  
6 these goals, not make the recovery of Indian lands more  
7 difficult.

8           Right now, the Department is slow to act  
9 on all trust applications, including on-reservation  
10 applications. There's a lot of technical standards and  
11 legal documents. The BIA is tasked by law to  
12 maintaining legal title to Indian lands, and the BIA  
13 should be the one to facilitate that kind of  
14 recordkeeping and assist the tribes with those issues.  
15 The Department should deem on-reservation Indian land  
16 acquisitions to be categorically excluded. After all,  
17 the reservations were reserved as Indian homelands, and  
18 the lands are to be used as Indian homelands. So there  
19 is no change in purpose.

20           So any time that acquisitions would  
21 preserve Indian sovereignty and promote Indian  
22 self-determination, foster Indian business development,  
23 encourage Indian economic development, enhance tribal  
24 self-government, promote agricultural, forestry, animal  
25 husbandry, restoration of the soil, promote the

1 delivery of tribal government services, enhance tribal  
2 government and community institutions, or provide for  
3 Indian nation infrastructure, the lands should be taken  
4 in trust.

5           The Act does not provide different  
6 standards for on-reservation and off-reservation, but  
7 puts these categories in the same sentence within or  
8 without the reservation.

9           The Department should defer to the  
10 tribes' goals in reacquiring Indian lands, because that  
11 furthers Indian sovereignty, self-determination,  
12 self-government, business development, economic  
13 development, and provision of tribal government  
14 services as intended by the Indian Reorganization Act.

15           The Department should recognize that the  
16 recovery of sacred sites and sites of historical  
17 significance or occupation are very important to the  
18 sustainability of Indian nations and should give  
19 special priority to such acquisitions, whether on or  
20 off the reservation. There should be categorical  
21 exclusions from NEPA for these issues.

22           There shouldn't be a different standard  
23 for business or economic development because business  
24 and economic development are part of revitalizing  
25 tribal economies. That's the purpose of the Indian

1 Reorganization Act.

2           As far as gaming goes, we have Section  
3 2719 of the Indian Gaming Regularatory Act. When the  
4 tribes follow that, then there are supposed to be no  
5 further burden on Indian land-into-trust process.  
6 Nothing in this section shall affect or diminish the  
7 authority and responsibility of the Secretary to take  
8 land into trust, period. It doesn't say new standards  
9 for off-reservation gaming in Section 151. So to the  
10 extent this effort is motivated by that issue, it is  
11 contrary to the statute.

12           When tribes seek to take land in trust  
13 for their permanent home, the United States should  
14 defer to that. Indian trust land is an essential part  
15 of the territorial component of Indian sovereignty. It  
16 is protected by Indian treaties and self-governed by  
17 Indian nations and tribes in furtherance of our  
18 original inherent sovereignty. The Secretary should  
19 not change the rules for pending applications.

20           Concerning on-reservation acquisitions,  
21 the views of state and local governments are entitled  
22 to little weight. When the United States acquired  
23 claims to its territory, for example, through the 1803  
24 Louisiana Purchase Act, they recognized that Indian  
25 tribes owned the land and that the United States should

1 deal with Indian tribes through treaties based on  
2 mutual consent. That treaty should be considered a  
3 covenant with the land and the United States should  
4 adhere to the original bargain.

5           The original territorial organic acts  
6 expressly recognized that Indian rights were to be  
7 preserved. These are the foundations for the states.  
8 So the original policy at the time of the constitution  
9 was "The utmost good faith shall always be observed  
10 towards the Indians." In their liberty and property,  
11 they shall never be invaded. That is in the ordinance  
12 in 1787.

13           But the constitution framers wanted to  
14 continue that forward, because it was a framework for  
15 new states to be admitted to the union. And so they  
16 reenacted that in the first congress upon ratification  
17 of the constitution in 1789. So that's very clear  
18 about what the policy of the United States is.

19           Though that original policy and those  
20 territorial acts is carried forward in the subsequent  
21 territory acts, the Indiana Territory Act, the Michigan  
22 Territory Act, the Wisconsin Territory Act. And  
23 preserving the original Indian rights is in those  
24 territory acts.

25           So when you think about where do the



1 states come from? They come from those territorial  
2 acts. They come from their statehood acts that are  
3 based on the territorial acts. All those territorial  
4 acts preserve provisional Indian rights.

5           So out here in the west, for example  
6 North and South Dakota, the states were required to  
7 disclaim all right, title, and interest to Indian  
8 lands. And they also recognized that the federal  
9 government would acquire additional lands for federal  
10 purposes, and they agreed to that. We the people of  
11 the state of South Dakota and we the people of the  
12 state of North Dakota, they agreed to that as part of  
13 becoming a state. So they shouldn't be objecting to  
14 these trust land acquisitions now. They were on notice  
15 that our Indian lands were permanent homelands because  
16 that was federal law under the treaty. And they  
17 shouldn't be taken to have a right to object to what  
18 was already the law when they became states.

19           The Indian Reorganization Act authorizes  
20 Indian nations and tribes to negotiate with state and  
21 local governments, not the Secretary on behalf of the  
22 tribes, but as a matter of self-government. So the MOU  
23 requirement should not be included in any federal  
24 regulation because that's a voluntary matter. That's  
25 up to us if we want to talk to the state and local

1 tribes, not up to the United States. It would be  
2 contrary to the statute to have any requirement for  
3 state and local agreements, and it is contrary to the  
4 framework of the constitution.

5 So we'll submit these comments. These  
6 are preliminary comments, and we will, you know, have  
7 further comments.

8 MR. SCHERER: Mr. Van Norman, I have one  
9 clarification on the NEPA. Were you meaning to say  
10 that you didn't think a NEPA requirement was necessary  
11 for the discretionary acquisition on and  
12 off-reservation?

13 MR. VAN NORMAN: I'm saying, where it  
14 has already been Indian lands in the past, it should be  
15 no surprise to anybody that it is going to be Indian  
16 lands in the future. It shouldn't even be by NEPA to  
17 begin with.

18 MR. SCHERER: Thank you.

19 MR. VAN NORMAN: Thank you. Next  
20 Chairman.

21 MR. TRUDELL: I am the Chairman for  
22 Santee Sioux Nation and would like some floor time.

23 MR. SCHERER: Absolutely. Next we have  
24 one addition to the list, Chairman Flying Hawk from the  
25 Yankton Sioux.

1 MR. FLYING HAWK: (Native Language  
2 spoken.) I just wanted to say thank you for coming  
3 here to listen to us and to speak just a little bit  
4 with our language. I believe that is our strength.  
5 And the comments, the statements that have been made, I  
6 have been saying that.

7 Historically, we are a people. We are  
8 human beings. And throughout history, as this land was  
9 discovered, as it was claimed, 1300's, 1400's, 1492, I  
10 think, is the date that comes to my mind, being in  
11 school and learning. We do learn. And I think a  
12 statement has been made that we learn how to live, and  
13 we will continue to live.

14 So I believe the question was: Why is  
15 it important to focus on why land recovery is important  
16 to my tribe? And the importance of it is that it is  
17 where we live and where we have our being. And it  
18 is -- I am from the Ihanktonwan Nation. That is  
19 translated as the end of the village. It is generally  
20 recognized as the Yankton tribe.

21 So we have a lot of learning. Even  
22 though, historically, from the 1300's, we've been  
23 coming and living together and still, I believe,  
24 haven't learned. I look at the statement that we are  
25 the same but yet we are different, and then also

1 reversing that and saying we are different but yet we  
2 are the same. We are all going towards the same place.  
3 We all are trying to work and achieve the same humanity  
4 goal. We live together.

5                   We have challenges within our tribe and  
6 within all of our nations on this North American  
7 continent. We are citizens of our tribe. We are  
8 citizens of our state. We are citizens of America.  
9 And we are Native Americans. And there are challenges  
10 and struggles that we see today within our communities,  
11 within our state, and within the country.

12                   What have we learned from that? We are  
13 a people that have been here and have endured those  
14 challenges and yet are still here. So to acquire those  
15 lands that have been our land that we lived on, the  
16 land that has our blood lying in there is a simple  
17 question.

18                   We do have an answer to why these  
19 meetings are being held. I believe our Chairman from  
20 the Sisseton stated it simply the other day at our  
21 meeting. Our protocol, our etiquette, our processes  
22 are with a piece of wood and a piece of stone, and we  
23 put those two together, and we have some smoke. And we  
24 talk, and we agree.

25                   But today I realize that we do have

1 challenges. We need to put things down on paper.  
2 That's where it begins. We have something that was  
3 written and was called a treaty. And from that treaty,  
4 there was some trust responsibility that is there. And  
5 we believe in that. We believe that the government is  
6 telling us that these things are there. We need to  
7 have these lands. The Yankton land was considered a  
8 checkerboard land. The reservation boundaries have  
9 been recognized. It is within the county. But yet,  
10 within that county, there are lands that are ours and  
11 recognized as ours and yet still others are lands that  
12 belong to the community, our neighbors. And we just  
13 want to reacquire those if they are available.

14                   And to help us become economically  
15 feasible, to be able to stand on our own and to not be  
16 looking at the government to help us, we need to be  
17 able to stand back up and be on our own feet again.

18                   So it is a simple question. We do have  
19 our rules. We've been asked to have some protocols,  
20 some what our language says the world had. Those are  
21 just protocols that each of us as tribes have, and we  
22 will come up with a protocol that fits us as tribes  
23 overall throughout the country.

24                   So I just wanted to say that much and  
25 say thank you.

1                   MR. SCHERER:  Chairman.

2                   MR. TRUDELL:  (Native Language spoken.)

3   Hello.  I already handshake you.  Thank you for  
4   bringing your process this way.  I'm old school.  You  
5   know, I don't read all of the letters all the way  
6   through saying you have to pre-register to talk.  
7   That's not even our way.  Number one, it is not our  
8   way, you know.  The opportunity to speak should be for  
9   everybody.  Everybody's thoughts should be shared with  
10  everybody.  That's how you determine something positive  
11  or good may happen or whether it is bad and shouldn't  
12  happen.

13                   I want to thank my (native language)  
14  over here, Mr. Flute hiding in the corner over here,  
15  the chairman from Sisseton.  He already gave some  
16  history on who we are.  And we are the Mdewakanton  
17  Wahpekute Santee Sioux.  We own this whole state, part  
18  of Wisconsin, Iowa, Canada, all over.

19                   The government did everything they could  
20  to diminish us as a people.  Now you hear Prairie  
21  Island.  You hear Shakopee, Lower Sioux, Flandreau  
22  Santee Sioux, Santee Sioux, Nebraska.  You know,  
23  they've done a lot.  They took all this land from us,  
24  never paid us properly, never paid us properly for the  
25  things that were supposed to be provided by treaty.

1           They relocated us, you know, to Fort  
2 Thompson, to Crow Creek and later to Nebraska. Not out  
3 of the goodness of their heart, they put us down there  
4 to shield the white settlers from the Oglalas. It  
5 wasn't out of kindness. They moved us from some barren  
6 country to a little less barren country. I wanted to  
7 share that much.

8           And our ancestors, they fought so that  
9 we could be here today. They hung 38 of them over here  
10 in Emanate, the largest mass hanging this country ever  
11 had or ever has had. Then that wasn't enough, so they  
12 kidnapped two of our people out of Canada and brought  
13 them back and hung them, also. Then they talk about  
14 how we are a savage people.

15           When Little Crow came back up into this  
16 country, they killed him, cut his head off and paraded  
17 it through the streets. We have a tragic history with  
18 the non-Indian people.

19           Many years ago, we tried to move  
20 forward. We tried to have our kids understand, you  
21 know, that you need to move forward. You can't move  
22 forward if you have hate in your heart. You have to  
23 heal yourself.

24           Prior to our reservation in Nebraska, I  
25 think it was originally 159,000 acres. We lost half of

1     that in one shot under the Dawes Act.  What is  
2     happening now with the reorganization of the  
3     land-into-trust issue is almost echoing the Dawes Act.  
4     It's another way to diminish Indian lands and Indian  
5     people or the ability of Indians to move forward and  
6     grow.

7                     Now, we have a reservation board just  
8     like Yankton and everybody else talked about.  Our  
9     boundaries have not been diminished.  The opportunity  
10    to buy land, because they only make it once, is very  
11    limited.  A lot of us live in very sparsely-populated  
12    areas.  In the county that we live in, there's less  
13    than 10,000 people.  To limit us by enlarging the  
14    process that you have to go through to acquire land  
15    off-reservation, will do great harm to us tribes  
16    because we don't have population base.  We have nothing  
17    to tax.

18                    If we wanted to purchase land in Sioux  
19    Falls, South Dakota, I think the first- or the  
20    third-fastest growing city in the country, we should do  
21    that.  We should be able to do that.  We can do that if  
22    we want to pay taxes and all that.  To give us an edge  
23    economically, we should have the ability to put that  
24    into trust.

25                    Now, I really argue whether, you know,



1 we should put land into trust for the government or  
2 not, because somehow that seems like it is not ours  
3 anymore, you know, just by the terminology of that.

4 Putting land into trust off-reservation at  
5 this time is hard enough. I think we have been trying  
6 to put 7-point-some acres into trust for, I believe,  
7 ten years now. We can't get that done. It is not even  
8 gaming. It is an existing business we bought south of  
9 Yankton. Actually, about 20 miles down the river from  
10 our home. Very, very difficult. I don't know who  
11 keeps making it more difficult.

12 And so as a tribe and, I guess, as an  
13 elected leader of that tribe, I propose on behalf of  
14 our tribe any change, any proposed change, some  
15 discussion with the tribes directly prior to that so we  
16 can formulate what we think works best for us.

17 Also, on behalf of the tribes of the  
18 Great Plains, we would like to bring a consultation to  
19 our country, Rapid City, Pierre, somewhere in that  
20 area, Sioux Falls, you know, where there's more access  
21 for our people to come and to share their thoughts on  
22 that.

23 I know that you've heard everything  
24 already. I can't tell you any more than what has been  
25 told already. There have been some very, very strong

1 submissions this morning, you know. I'm sure not going  
2 to try to top any of that. I'm not that, whatever you  
3 want to call it, articulate. Thank you.

4 MR. WRIGHT: I'm Larry Wright, Junior.  
5 I'm chairman of the Ponca Tribe of Nebraska. I want to  
6 thank my elders for speaking here today, for Chairman  
7 Flute for the prayer, and I want to echo the sentiments  
8 that have been shared so far, the technical aspects of  
9 why this is not a good idea.

10 From a historical context, what this  
11 means for my tribe, you know, 2017 marked the 140th  
12 anniversary of when the federal government removed my  
13 people from the South Dakota-Nebraska border down to  
14 Oklahoma against our will, took our land.

15 Before that, the federal government took  
16 the last 96,000 acres that we signed with the treaty  
17 with the federal government away from us, including  
18 that land, in the 1868 treaty, Fort Laramie made us  
19 trespassers on our own country, made us criminals in  
20 their eyes. And we moved.

21 The federal government later terminated  
22 our people. We were one of the last tribes to be  
23 terminated in the '60s. These actions were done by the  
24 federal government against us. Took our land away.  
25 Today, we still have less than a thousand total acres

1 of land that have been restored to our tribe through  
2 various means, some by donation, some by the best way  
3 that we could to finance that and pay for that.

4 Today, we're in the middle of buying  
5 more of our historic land at a price tag of \$6 million.  
6 And what's that worth to us? That's been in the hands  
7 of white families since we've been moved. That land  
8 includes the burial site of our people, one of our last  
9 leaders, traditional leaders. So what is that worth to  
10 us? For \$6 million, our people said do it. We don't  
11 know how, but do it.

12 And so to put more strings on us to buy  
13 that land -- and it is in the same county as Chairman  
14 Trudell is talking about. So we end up getting pitted  
15 tribe against tribe sometimes in these situations. It  
16 is the federal government's doing. But here yet today,  
17 we bought other land that contains historic sites.

18 My tribe was terminated in the '60s, and  
19 we were reinstated in 1990. And 27 years, it has taken  
20 us to get just 1,000 acres. We weren't allowed a  
21 reservation. We were allowed service areas. We are  
22 spread over 12 counties in Nebraska, two counties in  
23 Iowa, and a county in South Dakota. Tribes know what  
24 it is like to have services in one geographic space,  
25 but we have to duplicate services across those

1 counties. From one end of our service area to the  
2 other, it is a four-hour drive, so we have to have  
3 offices in each of our sites.

4 So off-reservation, on-reservation, we  
5 get caught up in that, and it is a struggle. It makes  
6 this a cumbersome process. A year ago, we heard the  
7 Trump administration, the transition team, say they  
8 want to make it easier. This is not easier for us.  
9 When we talk about economic development, all of those  
10 kinds of things, we face more hurdles.

11 Part of our Restoration Act said that  
12 we'd have 1500 mandatory trust acres in our Knox and  
13 Boyd County. It took us almost two years or a little  
14 longer to get a small parcel put into trust in that  
15 mandatory acquisition. So that process currently is  
16 cumbersome. It shouldn't be. It delays the process.  
17 It is historic land for us. It has cultural meaning.

18 When we try to do other opportunities in  
19 other areas, when it is for economic development, we  
20 face increased scrutiny. To give you an example,  
21 recently, as we celebrate -- not celebrate -- remember  
22 the 140th anniversary of our people being forcibly  
23 removed to Oklahoma, there was a community along the  
24 south border of Nebraska that had a trail. And on that  
25 trail, it was deemed that that trail is a hiking-biking

1 trail, but it was the exact trail that the people, my  
2 people, were removed on to Oklahoma.

3                   And the people down there wanted to deed  
4 that land to the tribe to honor and remember what our  
5 ancestors went through, our people that died along the  
6 way.

7                   The first thing that opponents came out  
8 and fought is: Are they going to put a casino down  
9 there? Now, mind you, this is a hiking and biking  
10 trail. It was 20 miles long and about a 150 feet wide.  
11 That's about almost as long from here to the front  
12 desk, it seems like. Which you can see, that's the  
13 first thing people default to. All we did is they  
14 deeded the land to the tribe.

15                   I want to thank Chairman Flying Hawk.  
16 This last year, we finalized a deal where his tribal  
17 nation had land that was located by our agency grounds.  
18 They reached out to us. They sold us that land,  
19 government-to-government. They didn't ask us what we  
20 were going to do with the land. They didn't ask us if  
21 we were going to do a casino. We have that respect for  
22 each other.

23                   The federal government did this to us.  
24 It is the federal government's job to take care and  
25 make this process seamless between the federal

1 government and the tribes. They took our land. It is  
2 their job to help us get it back when we deem that  
3 that's appropriate.

4 We are held to different standards when  
5 it comes to what we do with our land. Governments,  
6 federal administration, Trump, Baa, whomever, they are  
7 allowed to change their mind. When governors come in,  
8 when mayors come into their cities, they are allowed to  
9 change their mind. But when tribal governments go to  
10 put land into trust, and we have different  
11 administrations as well, when they change, we're not  
12 allowed to change what we want to do without increased  
13 scrutiny.

14 So I stand with the other tribal leaders  
15 here today to say this process shouldn't be more  
16 cumbersome on us. It is the federal government's job  
17 to make this easier for us. (Native Language spoken.)

18 MR. SCHERER: Would anyone else like to  
19 speak?

20 MR. WIGGINS: (Native Language spoken.)

21 My name is Mike Wiggins, Junior. I'm the tribal  
22 chairman from the Bad River Band of Lake Superior  
23 Chippewa. I want to just make a couple of comments,  
24 not to go into detail on some of the complexities or  
25 technical aspects of the changes that are being made.

1 We've heard such beautiful testimony that was already  
2 given to some of those points.

3                   What I wanted to just say is and, I  
4 guess, express to you is a humility that I'm carrying  
5 as I sit there and listen to all of these things that  
6 are going on. Part of what's taking place, as I sit  
7 here and listen to all of this stuff, is a  
8 reexperiencing of those mechanisms and those things  
9 that happened in the past that put us in such a humble  
10 place, as far as a land base, as far as resources and  
11 things like that, that accompany that thought of nation  
12 building as a tribe, that accompany that thought of  
13 survival into perpetuity as a tribe.

14                   When I was a little kid, I'd go out into  
15 the woods with my dad, and he used to teach me how to  
16 hunt. He said the first thing you do when you get out  
17 here and find a place to kind of wait is to clear a  
18 nice quiet spot for your feet. He said you need that  
19 little bit of space in case you have to turn around or  
20 in case you have to do something without making a bunch  
21 of noise.

22                   I always think about that. That little  
23 mechanism, that little thought of needing a little  
24 place for your feet.

25                   So when I think about how we lost our

1 land, when I think about our connections to all those  
2 places around Lake Superior -- you know, our tribe Lake  
3 Superior Chippewa, we are Ojibwe people. We go way  
4 back to when we are Gichigami, Lake Superior people,  
5 and Madeline Island, the Apostle Islands there was the  
6 heartbeat of our Ojibwe nation. No matter where we go  
7 around that lake, the water, the rocks, all of that  
8 stuff, we are connected to that.

9           To hear some of the technical aspects,  
10 you know, put forward, that notion that we have to  
11 reassert and try to convince men in suits in Washington  
12 that we have a connection to some of these places is  
13 really difficult to try to wrap the mind around,  
14 because we have old memories. And what happened then  
15 is like a blink of an eye to what's going on today.

16           Another part of that humility that I'm  
17 experiencing today is the fact that I'm dealing with  
18 people in poverty, rural people that don't have access  
19 to urban populations for economic development that are  
20 mired in severe unbelievable poverty. Tack onto that,  
21 as we all know, some of the chronic health conditions  
22 that are plaguing our people, some of the things  
23 related to diabetes and social justice issues, like  
24 access to traditional foods and things like that. It  
25 makes for a really bleak picture in terms of the



1 challenge that we're up against.

2 I'll say this. We are survivors. Every  
3 tribe in here is full of survivors, full of  
4 unbelievably resilient people that will survive into  
5 perpetuity. The question that remains is: How is that  
6 going to look? How is that going to look?

7 Listening to what was said and reading  
8 the proposed changes reminds me of when we resisted a  
9 massive mining project in the headwaters of our  
10 namesake river, the Bad River. We resisted resource  
11 extraction in a place that serves as a recharge for all  
12 of the ground water aquifers underneath our tribal  
13 home.

14 Part of that responsibility is looking  
15 towards the federal government, at their trust  
16 responsibility that they carry as it relates to  
17 protection of our places where it relates to protection  
18 of our people.

19 When I think about the trust  
20 responsibility and some of these details that are here,  
21 I was thinking to myself -- I remember in the old days  
22 when we used to be angry that some of the proposed  
23 changes and some of the things that govern us by way of  
24 our relationship with the feds was too paternalistic.  
25 It was too much like the father trying to take our hand

1 and guide us to some type of good place.

2 Today, sitting here looking at what's  
3 taking place and some of those things that are put up  
4 as potential obstacles, I don't even see paternal as a  
5 notion of some of those documents that reference the  
6 Great White Father. I'm not like, that's not even  
7 fatherly. That leaves me with the feeling you don't  
8 like us anymore.

9 These are vital pathways to survival  
10 that are represented in land acquisitions, which is  
11 just, at a base, giving us a place for our feet.

12 So think of all those babies, thinking  
13 of all those generations that are still on the way and  
14 how that population, our people, is growing. And we're  
15 already in a little finite amount of acreage that is  
16 our reservational homeland. Some of these things are  
17 really, really important to structure for the future.

18 Trust responsibility, as I found out in  
19 that resistance to resource extraction, ends up being  
20 like smoke. Everybody can talk about it. It would  
21 fill this room, and you could see it. You could feel  
22 it. You could be immersed in it. Then when it comes  
23 time to get a little bit of that trust responsibility  
24 to help protect us, all of a sudden, you are trying to  
25 grab on, and this thing keeps disappearing all around

1 you. Just like smoke, you can't get ahold of it.

2           The mechanisms of trust responsibility,  
3 the true integrity of trust responsibility is contained  
4 in the minutia and the details of the proposed changes  
5 that you are putting forward. Like so many chairmen  
6 said, that trust responsibility is connected to  
7 treaties. It is connected to blood. It is connected  
8 to old, old stuff. That is alive today just like it  
9 was a blink of an eye ago.

10           So when you think about how you approach  
11 the tribes, what you are hearing from all of these  
12 leaders that have all these people they are trying to  
13 take care of is don't put roadblocks. Try and help us.  
14 That's what you are here for. That's what we look to  
15 you and to President Trump for. It is a humble thing  
16 related to survival. It is a humble thing just related  
17 to space.

18           And then the last thing I want to  
19 mention is more of a little editorial rant. I watch  
20 these people in the state of Wisconsin, these  
21 foreign-born corporation owners roll into the State of  
22 Wisconsin on land that's provided to them. The Foxconn  
23 Corporation, with Governor Scott Walker, the land was  
24 provided for them. Roads are going to be repaved.  
25 Heaven and earth are going to be moved for these people

1 to the tune of \$4 and a half billion of taxpayer money  
2 to set these guys up to open up shop.

3 This is the same administration that has  
4 killed land-to-trust -- not so much land-into-trust  
5 applications, but off-res gaming possibilities that  
6 were structured to benefit through those  
7 intergovernmental agreements all the communities around  
8 them.

9 So when I look at what's taking place  
10 for foreign-born corporations compared to what I'm  
11 experiencing here today as a tribal leader looking at,  
12 you know, some of the processes to get lifelines,  
13 economic development and other lifelines for us, it is  
14 just unbelievable. It boggles my brain.

15 And it leads me to the bigger picture,  
16 which scares me, too. Because a lot of times, this is  
17 where I see the federal government not taking care of  
18 their own non-tribal people with the shrinking of  
19 national parks and things like that for corporate  
20 profit-driven projects. I don't know if all the  
21 intergovernmental agreements and all of the  
22 prove-your-connections to the land and all of that is  
23 put up for them guys the way it is here today.

24 Money is not a connection to the land.  
25 That gives them the ability to destroy and do whatever

1 they want, because of the fact that they persuade  
2 people to just look away, and they play greed. Blood  
3 is a much stronger connection to the land than money.  
4 And, you know, I wanted to just point out that  
5 discrepancy that's there, because this is all happening  
6 in a place where we're trying to survive and take care  
7 of our people.

8                   So please think about things from a  
9 little more of a paternalistic aspect. Please remember  
10 trust responsibility. And that smoke is actually made  
11 of that ink on that paper right there. And we're here  
12 at a base asking for help because this is nation  
13 building. This is survival. The lens of this is  
14 forever.

15                   And we're taking care of things like  
16 water. We're taking care of things like land. Our  
17 reservation is like a cleansing filter for Lake  
18 Superior. We don't develop a lot of things that most  
19 people would see as profit centers on shorelines and  
20 stuff like that, because our responsibility is to seven  
21 generations from now. I want those children to  
22 experience the same type of experiences I experienced  
23 there. And that responsibility tempers that notion of  
24 economic development in a lot of ways.

25                   We are doing all this stuff as citizens

1 of the United States, too. We are doing all this stuff  
2 as people who understand we're in the fresh water  
3 stronghold of America and that we have a responsibility  
4 to protect this for everybody.

5           And when we look at the government and  
6 at that relationship, reciprocate that. Reciprocate  
7 that. And remember that when there's no tribal leaders  
8 around and there's just non-tribal men in suits that  
9 don't think about those things, that don't think about  
10 the children, all those babies on the way and the  
11 things that we have to. (Native language spoken.)

12           MS. HART: Thank you.

13           MR. SCHERER: We'll go here first.

14           MR. RED WILLOW: We'll just make this  
15 mike here a little bit taller. But (Native Language  
16 spoken.)

17           First of all, I'd like to thank  
18 Mr. Flying Hawk for his prayer and also his words  
19 there. And this month here, January, we call wiotehika  
20 wi, the moon of the hard time. And so, also, I'm part  
21 of the executive committee of the Oglala Sioux tribe,  
22 the fifth member.

23           There is the president, vice president,  
24 secretary, treasurer, and the fifth member. And the  
25 president and the vice president are elected at large

1 by the membership. And the treasurer and secretary and  
2 the fifth member are selected by the tribal council.  
3 So I'd like to also thank the tribal council here for  
4 having faith in me to elect me to that position fifth  
5 member for the second term.

6 But I have also been a part of the  
7 tribal council for two terms, and I have testified  
8 before these commissions. I was first elected in 1976  
9 when Public Law 93-638 came out, and we had testified  
10 repeatedly regarding those regulations, after that, the  
11 contracting of law and order, education. I testified  
12 regarding health services. All our treaty rights that  
13 are guaranteed in the 1868 and '51 treaties that our  
14 attorney Mark had previously gave you testimony on  
15 concerning the Oglala Sioux tribe.

16 So 40-plus years in giving testimony  
17 before various commissions, various events like this.  
18 Now, kind of erase from your mind right now that you  
19 are representing a subpart of the government. In our  
20 past, there are representatives that negotiated  
21 government-to-government. One of the first times I was  
22 involved in a real government-to-government testimony  
23 or talks was our Chief Frank Fools Crow, after the  
24 Wounded Knee Occupation of 1973 and subsequent contract  
25 for law and order, met with Gerald Ford to discuss

1 getting law and order back to Pine Ridge Reservation  
2 under our own control, rather than the Bureau of Indian  
3 Affairs.

4           So for our tribal leaders here to be  
5 giving testimony before you is kind of like an elder  
6 talking to a teenager or a child here and trying to put  
7 forth and get across the idea that we have a sovereign  
8 people. We are guaranteed these lands.

9           And then to try to talk about putting  
10 land into trust on lands that we own by treaty, in some  
11 of our elders, that doesn't sit. You can't discuss --  
12 or it is an idea that is foreign. We are putting lands  
13 into trust and have put lands into trust in our sacred  
14 Black Hills at a place called Pe' Sla, also our sacral  
15 Bear Butte. We have lands there within our treaty  
16 territory that are ours, but we are purchasing that  
17 back. I suppose, at some point in the future, we'll be  
18 reimbursed for those moneys that we spend in getting  
19 our treaty lands, buying back our treaty lands. That's  
20 a foreign concept to some of the elders.

21           These hearings, some of them, especially  
22 in the current climate, I would say that you are here  
23 to hear our game plan to, probably, put further  
24 stopgaps in what we want to do. It might all seem  
25 clear and aboveboard that you want to hear stuff that



1 you want to work with us on. But, in my experience,  
2 some of these hearings are actually to flush us out and  
3 let you know what our game plan is so that you can  
4 further stymie our efforts in regaining some of our  
5 treaty lands.

6           So there's a lot of talk about blood  
7 being shed for our lands. One of our great leaders was  
8 asked before one of the commissions that was brought to  
9 our treaty lands. That is our great leader Tasunka  
10 Witco. He was brought before a commission, and the  
11 general that was there representing the U.S., I believe  
12 his name was -- our Lakota people called him what  
13 Wichackiamini (phonetic). He was a three-star general.  
14 So the question was posed to our Chief Crazy Horse, so  
15 where are these lands that you claim are yours? So in  
16 response to that question, Tasunka Witco, Crazy Horse,  
17 answered, "My lands are where my dead lie buried."

18 "The lands are where my dead lie buried." That  
19 response said it all. That is where our lands are,  
20 some of these lands that we are asking that, perhaps,  
21 we need to get back into trust are actually lands where  
22 our ancestors spilled blood in defense of our country.

23           So it is foreign to some of us to think  
24 that, well, we need to put some of our lands back into  
25 trust. But, yet, this is the mechanism that we must

1 bow down to try to make this current administration  
2 understand where we're coming from.

3           So in that sense, that is what I -- and,  
4 I suppose, in the future, Great Spirit willing, that  
5 there are more hearings, more testimonies, in other  
6 areas, in other subjects that our treaty rights  
7 guarantee that we will be making. My children and  
8 grandchildren will probably be before some of these  
9 committees to give testimony, also, in guaranteeing our  
10 rights as an equal part of the government.

11           In June of this coming year, the  
12 International Indian Treaty Council is meeting. They  
13 will be having their annual meeting in our sacred Black  
14 Hills at Bear Butte, and all Nations across the globe  
15 will be attending that to discuss such matters as those  
16 that were approved ten years ago in the Indigenous  
17 Rights of Native People's. I'd like to invite all  
18 native nations that want to come. A lot of it is  
19 repatriation, also. We need repatriation laws.

20           So that's the extent of what I would  
21 like to say to you today (Native language spoken.)

22           MR. SCHERER: Thank you very much. I  
23 think that now might be an opportunity to take a quick  
24 ten-minute break. As mentioned at the beginning of the  
25 consultation, we'll extend the consultation time for

1 the amount of time that we're out.

2 (Recess.)

3 MR. SCHERER: As you approach the mike,  
4 say your name and your tribe. If you are in a  
5 leadership position, as well, in the tribe, express  
6 that as well. If you are not and you are representing  
7 a tribe as legal counsel or whatnot, please make that  
8 note.

9 MR. STEVENS: I think it is still  
10 morning. Good morning. My name is Ernie Stevens. I  
11 represent the National Indian Gaming Association.

12 You heard earlier, I'm an Oneida from  
13 Wisconsin. You heard our councilman give our position  
14 on behalf of the tribe. So I just wanted to say a few  
15 things so I could try to emphasize the importance of  
16 what's happening here.

17 I think that the leadership has  
18 articulated a beautiful message here today. And I  
19 won't be too partial to my region that I come from, but  
20 this is where I come from. We have some of the most  
21 articulate leaders and professional people that support  
22 them in Indian history, and a whole bunch of them are  
23 here today. So I think that -- I know you understand  
24 me.

25 And I've known Paula for years. Kyle,

1 you are new, but I know that you know what you are  
2 doing or you wouldn't be where you are. So I emphasize  
3 that because I think that it is important that we  
4 appreciate and understand that we don't get into a  
5 formality here. And these leaders here have spoken  
6 from their heart. They have spoken from their  
7 community. And they represent all of our children, all  
8 of our elders.

9 I stand here with Gay, one of the most  
10 important elders still working very hard on behalf of  
11 tribal leadership. She will go down in history. Right  
12 now, we could call her a living legend. These are the  
13 kind of people we have. Nobody really retires, I don't  
14 think, in Indian Country. We just keep working. And  
15 her late husband Tim Wapato was one of the most dynamic  
16 fighters in Washington.

17 I have a bunch of scribbling here. I  
18 won't get into too much detail or try to read my  
19 writing. But I think that the emphasis that I would  
20 like to say -- first of all, I'd like to introduce Andy  
21 Ebona as our treasurer and then Danielle Her Many  
22 Horses, the deputy executive director. She's a lawyer  
23 and a very powerful Oglala woman. She's one of the  
24 ones on the front lines in Washington, D.C. Then  
25 Debbie Thundercloud is our chief of the staff. She's

1 the former chairlady of the Oneida Nation in Wisconsin.  
2 I apologize if I miss anybody.

3           But I just can't emphasize enough that  
4 we have to fight. And this can't be a formality. We  
5 have to stand our ground. Just again, Paula, is a  
6 veteran. Kyle, I met you last night. I trust that you  
7 are a dynamic, hard-working leader, like I said, or you  
8 wouldn't be where you are. You have to document this.  
9 You have to hear us. You have to fight those folks to  
10 understand us.

11           I'm not saying to get fired. But  
12 there's a lot of Indian people that got fired in  
13 Washington, D.C. because people didn't listen to tribal  
14 sovereignty, didn't stand by tribal government. Again,  
15 I'm not telling you to get fired. I'm telling you to  
16 stand your ground and fight for us.

17           I think, from my standpoint, when I  
18 brought -- I brought Geoff Freeman to Oneida. He kind  
19 of came there wanting to visit me. He's the president  
20 of the AGA, American Gaming Association. We drove  
21 around Oneida, and I explained to him that this is so  
22 important for us.

23           It is so important for my father, who is  
24 living today in the Anna John Nursing home. Ernest  
25 Stevens, Senior, just wanted to restore homelands.

1 Even though he built our casino and built our school,  
2 he just wanted to restore homelands. That's really  
3 what it is about.

4 So I think the lawyers and the leaders  
5 here have said it much more articulately than I could  
6 ever say it. The emphasis that I make here is that we  
7 have to stand our ground and get our message across.

8 So I wanted to tell you just about my  
9 father, that he was with the -- under the Nixon  
10 administration, he was an appointee. I think, he was  
11 deputy director or deputy commissioner in charge of  
12 economic development and education. In that era, my  
13 father could call the Nixon Whitehouse any time he  
14 wanted. That era was one of the most important eras of  
15 our history.

16 I told that to the Secretary Zinke, and  
17 Secretary Zinke said, "Let's make this one better."  
18 The only way we're going to be able to do that is that  
19 we have to work hard. We have to stand our ground.  
20 And you guys are going to have to take them on.  
21 Because we're here. We're proud. We're professional.  
22 We're polite. But I can't say it enough how much we  
23 need you to take our message back to these folks.

24 And the Secretary Zinke was at the  
25 museum at the inauguration. He's been in Indian

1 Country. And at the same time, we have concerns about  
2 the way things are going. We have to make this process  
3 legitimate, and we have to have a great product that  
4 comes out of this.

5           So, again, I can't emphasize enough that  
6 we have to fight and you guys become us. You can't  
7 imagine. You've got it on tape. It is there. This is  
8 one of the most valued and important presentations  
9 today. This day should go down in history, because  
10 these tribal leaders are here with their teams to fight  
11 for our tribes, for our people, for the future of our  
12 governments standing strong so we can have the kind of  
13 land that we need.

14           Not just for gaming, we like our gaming.  
15 We have gamed since time immemorial, and we'll continue  
16 to game. It is really not about that. It is about the  
17 restoration of the homelands. I know I am preaching to  
18 the choir.

19           Again, I'll say the first thing I said.  
20 Fight for us. Fight for the leaders. These are  
21 beautiful hard-working people. Thank you.

22           MS. HART: Thank you.

23           MR. HOGEN: Good morning. I'm Phil  
24 Hogen. I'm a member of the Oglala Sioux tribe, but I'm  
25 here today in my capacity as special counsel to the

1 Lower Brule tribe. And Chairman Gourneau is in the  
2 room with us from that tribe.

3 I'm not going to do a shotgun blast on  
4 everything you are talking about, maybe just a rifle  
5 shot. With respect to Point Number 9 on your list of  
6 questions that deals with MOUs, it asks do the MOUs  
7 serve a worthwhile purpose in promoting cooperation and  
8 so forth with local and state governments.

9 Undoubtedly, they do. Should they be  
10 addressed in the process? Probably, they should be  
11 addressed. I've seen the work in a variety of  
12 circumstances, and it really can -- buy them a new fire  
13 truck, and they'll provide the service, those kinds of  
14 things. But in terms of the tribes negotiating power,  
15 it is important when those have to be in place. That  
16 is to say that you've got to have an MOU for this  
17 service or that service before we put the land into  
18 trust really puts the tribe in a bad bargaining  
19 position. So if you say propose what you might be able  
20 to do, that's sure easier to do. But once the land is  
21 into trust, the tribe would be in a much better  
22 negotiating position to actually get what they need and  
23 what they want and what will work for both parties as  
24 far as an MOU is concerned.

25 The Lower Brule Sioux tribe is very



1 possibly the poster child for the problems with the  
2 process. For 20 years they fought in litigation with  
3 the State of South Dakota to get an off-reservation  
4 track into trust. Now, as they go forward with things  
5 like a two-part determination, it is a little hard to  
6 turn around with somebody you've been fighting in court  
7 with for 20 years and say we want to cut a deal, you  
8 know, before we can take that next step. And so,  
9 hopefully, that perspective can be taken into  
10 consideration.

11           The Lower Brule Sioux tribe and I would  
12 like to thank you very much for coming out here. I've  
13 had the privilege of sitting on your side of the table  
14 on some of these kinds of things. At the end of the  
15 day when we get back to the office in D.C. or whatever  
16 and say, okay, what are we going to do as a result of  
17 this productive consultation that we've had, sometimes  
18 we would say, you know, I don't know that we need to  
19 change that much. And that can be a success. I mean,  
20 you don't have to say, well, we thought about doing  
21 this, but after hearing what was said, we maybe don't  
22 need to take all of those steps. If you don't make  
23 huge changes, you won't have failed in your mission.  
24 You will have succeeded. We wish you well in that.  
25 Thank you.

1                   MR. SCHERER: Thank you. Chairman for  
2 Lower Brule Sioux.

3                   MR. GOURNEAU: Thank you, Phil. (Native  
4 Language spoken.) Boyd Gourneau, Chairman of the Lower  
5 Brule Sioux tribe. We will be having some testimony.  
6 But, you know, we are going to have to work with  
7 whatever the government decides. It is unfortunate.  
8 We would like you to invite you to our region and to  
9 bring Mr. Zinke with you. He is a decision-maker. He  
10 should be at the table. No offense to you two. He  
11 should be here.

12                   First of all, you know, I personally  
13 look at the old saying, if it ain't broken, don't try  
14 to fix it. It is a process that we have worked around  
15 and made work. And when there's changes to laws, you  
16 know, and the effect -- we look it as a Trojan horse.  
17 It's unfortunate we have to look at it that way. You  
18 know, that's how we view it.

19                   You know, because a lot of our lands  
20 were lost under the guise of the federal government and  
21 some of the administrators there. We have lots of  
22 horror stories. Every one of them -- we've all had  
23 them negative experiences, and it was at the hands of  
24 the federal government. So forgive us, you know, in  
25 that aspect.

1                   As we apply for our own land, it is with  
2 the thought of creating a fair quality of life for our  
3 people. And, you know, we can do it without this Part  
4 151 or if you take our comments and truly incorporate  
5 them into 151 for the betterment of our people and our  
6 tribes. Generally when you deal with these, it is not  
7 one size fits all. Every tribe is unique. Every  
8 nation is unique. We ask you to look at that. (Native  
9 Language spoken.)

10                   MR. SAZUE: Hello. Good morning. My  
11 name is Brandon Sazue, Chairman of the Crow Creek Sioux  
12 tribe. I didn't bring any comments or anything. I'm  
13 just going to speak from my heart and, maybe, comment  
14 later.

15                   We should be here on a  
16 government-to-government consultation, not like this.  
17 We should be sitting here with a chanunpa on the  
18 buffalo robe talking to Secretary Zinke himself. I  
19 don't know why they don't ever choose to come and send  
20 someone else. No offense to you guys. But that's my  
21 statement.

22                   Because what I see is an attack on all  
23 tribal nations. It is more so with this president and  
24 with these people in government now. I've never seen  
25 such a tax on Native Americans that bad before. Why

1 can't we just be left alone? I mean, you already  
2 killed our ancestors. You raped and murdered our  
3 children. And you already took our lands. What else  
4 are they going to take from us?

5 I'm not going to have any MOUs with the  
6 counties. What rights do they have to the reservation,  
7 to people that are sovereign? So I don't see this as a  
8 government-to-government consultation. I want that for  
9 the record.

10 And in the future, we need to see the  
11 Secretary. Thank you.

12 MS. HART: Thank you.

13 MR. DOSSETT: Hello. John Dossett, with  
14 the National Congress of American Indian. NCAI has  
15 passed a resolution. I think some of you were in  
16 Milwaukee. It was a very large meeting. It was an  
17 election year, so we had a big crowd of tribes. We  
18 unanimously passed a resolution raising great concerns  
19 about the proposal to amend 151.

20 And, also, you know, it is contrary to  
21 the purpose of the Indian Reorganization Act, to  
22 restore the lands for tribes. I think the tribes here  
23 have talked a lot about that.

24 I wanted to, maybe, focus my comments on  
25 why it may not be good for the Department of the

1 Interior to change regulations in this way. Obviously,  
2 it is not good for the tribes. There is a reason. I  
3 mean, the Department tried to change these regs in  
4 1999, and NCAI was very involved in that process. It  
5 got really political. It turned into a big mess.  
6 Congress got involved with everybody. Eventually,  
7 those regs didn't get anywhere. A similar thing  
8 happened in 2006. These regulations can be kind of a  
9 tar baby. We've seen it multiple times.

10 I think here, the way these regs are set  
11 up is there's a series of factors to be considered, and  
12 the Department of Interior really has broad discretion  
13 to apply them to a variety of different situations.  
14 But what your proposal seems to do is narrow that  
15 discretion. I think that's where you are going to  
16 create problems for yourself, as well as for the  
17 tribes.

18 I guess, in theory versus practice, you  
19 know. The theory is it would be good if there were  
20 cooperative agreements with states and local  
21 governments, yes. But in practice, you know, when you  
22 go out and -- some of these counties, you know, you are  
23 never going to reach an agreement. It is not going to  
24 happen. You will create a barrier to yourself. You'll  
25 have a good acquisition. Maybe you will want to do

1 habitat restoration. Maybe there is an important  
2 cultural site. But that county is never going to buy  
3 into it. It will be a barrier for the Department of  
4 the Interior, as well as the tribe.

5           In theory, every tribe has a reservation  
6 that is adequate for their needs. But when you  
7 actually look at the maps, you know, a lot them don't  
8 have a reservation boundary at all or it is like the  
9 description of the Prairie Island reservation, where it  
10 has a nuclear power plant right on top of it. When you  
11 go look at the maps and look on the ground, there's a  
12 reason the statute says on- or off-reservation.  
13 Congress understood it was necessary to take lands into  
14 trust of-reservation. Okay. So if you create this  
15 high bar for off-reservation acquisitions, I think the  
16 Department is going to regret that later on, as well.

17           I'm thinking, you know -- I know Warm  
18 Springs, out in Oregon, they are doing a lot of  
19 off-reservation habitat preserving. I've seen a lot of  
20 it along the river. It is amazing what they are doing  
21 out there. And the federal government is paying them  
22 to do it. The Bonneville Power Administration is  
23 taking federal revenues and paying the tribe to fix up  
24 habitat. That's a federal program. Now you guys are  
25 coming along saying, well, sorry, we're going to slow

1 down on the off-reservation acquisitions. You guys are  
2 going to want to talk with the Bonneville Power  
3 Administration about that. It is at odds with some of  
4 the programs the federal government is pushing on.

5 I guess, you can create a general  
6 standard and apply it to the different situations, you  
7 know. The land issues in the Dakotas are very  
8 different than they are in Southern California or  
9 Florida or Alabama or all over the country. This idea  
10 that you are going to have one standard to apply  
11 generally, I think, is not going to work out very well  
12 for the tribes or for the Department.

13 I think the idea of injecting gaming  
14 into these regulations isn't going to work and is  
15 likely to lead to litigation.

16 The idea of having a two-stage process  
17 and doing the NEPA at the end also violates the statute  
18 and is going to lead to litigation. And so none of  
19 this is going to work out very well.

20 One suggestion, I thought Mark Van  
21 Norman's words were very good about working on  
22 categorical exclusions instead. That seems to fit  
23 better with the desires of this administration, to  
24 limit regulatory -- this administration is all about  
25 let's have less regulations. This proposal is for more

1 regs.

2 One way to meet those goals would be  
3 to -- I thought the categorical exclusions for  
4 off-reservation acquisitions would be really very  
5 helpful.

6 Maybe focus this discussion on improving  
7 the title review process and improving the NEPA  
8 process, making it go quicker for those acquisitions  
9 that there's broad agreement on.

10 Instead of trying to revise these  
11 regulations that are likely -- just given the  
12 experience over the last 20 or 25 years, it is unlikely  
13 the Department is going to be successful in actually  
14 getting to a new regulatory regime here.

15 I guess I'll leave my comments to that.  
16 Yes, the tribes are definitely opposed to these  
17 regulations and would like to not see them move  
18 forward. I, also, think there's reasons for the  
19 Department of the Interior to think this over for  
20 themselves. It will make life more difficult for the  
21 Department. It will lead to a lot of litigation for  
22 the Department. That's not in your interest.

23 Thanks very much.

24 MS. HART: Thank you.

25 MR. AYRES: Jason Ayres, real estate



1 officer for the Keweenaw community. For those of you  
2 that don't know, Keweenaw Bay is located on Keweenaw  
3 Bay, Lake Superior, up in Michigan's Upper Peninsula.

4 We are located or surrounded by a rural  
5 county that goes by the name of Baraga County. Baraga  
6 County is drive-through county. If you are stopping in  
7 Baraga County, you are coming to the tribe's casino.  
8 Otherwise, you are driving through it to get to  
9 Houghton, to get to Duluth, to get to Sault  
10 Saint Marie.

11 Off-reservation trust acquisitions are  
12 very important to us. We are hundreds of miles from  
13 large cities, Green Bay being the closest one about 200  
14 miles away.

15 And so, you know, to see these proposed  
16 regulations come out like they did, the initial  
17 consultation sessions, and then kind of a back pedaling  
18 to put these consultation sessions together is very  
19 disappointing, but par for the course, really. Of  
20 course, I'm not here to blame you guys. I know you  
21 guys are the messengers.

22 The announcement for this session itself  
23 is insulting. I would almost bet -- and I'm not a  
24 gambling man -- that whoever put together this  
25 announcement knows very little about Indian tribes.

1 That's based on a couple of the questions.

2 Like one of the chairmen said earlier,  
3 when I initially read this consultation announcement, I  
4 had to stop after the first question and put it down.  
5 It is very insulting that the Department of Interior  
6 would put out a question to the tribes, "What should  
7 the objective of the land-into-trust program be?"

8 I would bet that all of the tribes here  
9 have a strategic plan that their first priority under  
10 lands would be to reacquire traditional homelands.

11 Then it goes on to ask, "What are the  
12 advantages/disadvantages of operating on land that is  
13 in trust?" I can't believe that the Department of the  
14 Interior is asking us these questions. I mean, I  
15 initially was going to prepare written comments for  
16 this, but I couldn't do it. I couldn't even begin to  
17 do it.

18 So, I guess, what I would like to do is  
19 read a paragraph from our resolution that we approved  
20 for the initial consultation deadline. Tribal  
21 sovereignty in its purest form is the ability of tribes  
22 to determine their future, as opposed to the Department  
23 and administration dictating what Indian society looks  
24 like by diminishing tribes' legal rights, political  
25 power, putting limitations on their economic systems,

1 and influencing tribal culture and social structures  
2 through policy born of an entirely different life  
3 perspective.

4           These proposed regulations are in direct  
5 conflict with the Bureau's mission statement to enhance  
6 the quality of life, to promote economic opportunity,  
7 and to carry out the responsibility to protect and  
8 improve the trust assets of American Indian tribes and  
9 Alaska natives.

10           Keweenaw Bay Indian community is opposed  
11 to these proposed regulation changes. Thank you very  
12 much.

13           MS. HART: Thank you.

14           MR. SCHERER: Is there anyone else who  
15 would like to share some remarks?

16           MS. TWO LANCE: I will. I'll just hold  
17 it. My name is Courtney Two Lance. I'm with the  
18 Oglala Sioux tribe.

19           One of the questions, it was Number 9  
20 regarding MOUs. In 2007, Oglala Sioux tribe, we  
21 received funding to do the secure transactions. And we  
22 put our proposal together. And one of the things that  
23 I was told is I had to send it to the solicitor for  
24 their opinion. And I did get a response back on March  
25 13th, 2008. The solicitor was Marcia Kimball. She

1 said that the MOU between the tribe and the State of  
2 South Dakota was a government-to-government document  
3 and it was tribal law. And so, basically, they have no  
4 business in approving anything that the tribe comes up  
5 with.

6 So when it came to that as a question, I  
7 was like, why do they want to get involved in something  
8 that the tribe -- if we are going to practice or we're  
9 going to exercise our economic sovereignty, then why do  
10 they want to get involved in something like that?

11 And what was your guys's -- mine are  
12 more questions to you guys. We tried to get a nursing  
13 home for our elders. In the state of Nebraska, they  
14 are still fighting us on some regulations where we can  
15 only have so many of our people in that home.

16 We also looked at excess property in Hot  
17 Springs, South Dakota. And the veteran's home up  
18 there, we wanted to get that property because it was  
19 excess property and we were the closest tribe to it.  
20 We had a total of 1500 homeless veterans. So we wanted  
21 to get that property and put it back into trust so we  
22 could put our veterans there.

23 The State of South Dakota will fight any  
24 of the Sioux tribes. They are not going to be that  
25 cooperating when we want to put something into trust.

1 So what I looked for in your proposal is how you want  
2 to improve this process for us. I haven't found it.  
3 You are asking us to build your program for you. It is  
4 not going to happen if we don't know what you guys are  
5 going to do for us. You know, we're constantly  
6 battling.

7 I'm one of the younger members, but I've  
8 listened to our tribal town reps in the past, our  
9 tribal presidents. They tell me this is what's  
10 happening, this is another thing happening.

11 In the last, what, two years, we tried  
12 to get the property up by Rapid City back into trust  
13 for the Sioux Nation. It is still a fight. They have  
14 only been able to put so much, which is all rock and  
15 hills. No big deal. They got it done. But the real,  
16 I guess, economic part of it for us, that's a problem.

17 So where are your suggestions that we  
18 can look at? How are we going -- I mean, if we are  
19 going to build your program for you, as per one of the  
20 questions, then how would you come to us and say we  
21 have a problem here, tribes we need you to fix this for  
22 us? There's nothing. I found nothing. I've had our  
23 regional director and I've had attorneys. Can you find  
24 me something so I can look at this? We found nothing.  
25 And so in the end, you are asking us to fix this for

1 you, you know, and using the word "consultation" to  
2 cover that. Okay, this is what the tribes say.

3 No. We want to know what you say. We  
4 want to know where you are going wrong. We want to  
5 know how the tribes are going to benefit from these  
6 regulations. I don't see it happening, not right now.  
7 And like I said, there's so many problems state by  
8 state.

9 If you go to South Dakota, you better be  
10 cruising around with somebody that can get you out of  
11 jail, because they will constantly racially profile  
12 you. When it comes to anything like this, to have a  
13 backup like this from the solicitor that says we really  
14 don't have no business in what the tribes want to do.  
15 I want to see a proposal. I have not seen your  
16 proposal. I've just pulled everything that I could  
17 pull when I read it, and it just -- it doesn't solve  
18 any situation. I've seen nothing to help us get that  
19 veterans home for our veterans. I'm looking to help  
20 them as much as I can. But how are you going to help  
21 us? I want to see that.

22 And please give us a follow-up. Don't  
23 just record us and take it back, look, we met with the  
24 Indians. No. I want to see a follow-up to, maybe,  
25 Gay, who can provide that to us.

1 Thank you.

2 MR. HALLORAN: I thank you. My name is  
3 Joe Halloran. I'm a shareholder at the Jacobson Law  
4 Group doing trust work for about 25 years.

5 I want to ask the indulgence of the  
6 tribal elders and leaders here that I speak and ask for  
7 that opportunity.

8 Here's my experience over time and my  
9 concern with the proposal. Deed-to-trust work has  
10 never been advanced in Indian Country by centralizing  
11 authority in Washington, D.C. As a matter of fact,  
12 the efforts to centralize authority under the Bush  
13 administration created a system where tribes' efforts  
14 to deed land went to die, to be honest with you.

15 So your solutions, how does fee-to-trust  
16 work improve? How does it work at a local level? I  
17 would encourage you to review these rules to  
18 decentralize authority as much as possible, to give  
19 authority, enhanced authority, and responsibility to  
20 your regions and to your agencies. They're the people  
21 we have relationships with. They know the land.

22 And since this administration has been  
23 in power, there has been a cooling of sense of  
24 authority and ability to do things that we've become  
25 accustomed to over 8 to 12 years. The flow of land

1     into trust has slowed down, not speeded up, and it is  
2     my humble opinion that that's intentional.

3                     I'll highlight a couple of points that  
4     have been raised. Mr. Hogen and Mr. Dossett speak to  
5     the MOU process. It can't be underestimated that that  
6     is a process that gives authority and evaluates the  
7     interest of people that you are not there to serve.  
8     MOUs flow naturally from a government-to-government  
9     basis. Make no mistake about it. Counties and  
10    municipalities come to tribes for MOUs when they want  
11    something, okay, when they want something.

12                    So this creates a real hierarchy of  
13    haves and have nots. Tribes with resources may be able  
14    to negotiate to hold their nose and achieve an MOU.  
15    Tribes with fewer resources and poorer relationships,  
16    typically smaller rural tribes, won't have that role.  
17    So you need to think about whose interests are being  
18    advanced in an MOU process. That process will go just  
19    fine and, in effect, better when you are not empowering  
20    one of the parties over the other. So where that MOU  
21    process fits in and encouragement in an after-the-fact  
22    process is great.

23                    We have to address jurisdictional issues  
24    anyway. It is a 151 requirement. That doesn't mean  
25    that we have to satisfactorily address them to the



1 interest of the non-tribal governments. I offer that.

2 Two, in decentralizing, the good folks I  
3 work with here in the Minnesota agency and the region,  
4 in Miami agency, in the eastern Oklahoma region. We  
5 have the eastern Michigan agency. They need help.  
6 They don't need someone in D.C. sitting on a decision  
7 that they then have to wait for. That's not empowering  
8 at all. That doesn't move land. They need resources  
9 and staff. You know what else they need? They need  
10 their discretion recognized, their authority to  
11 evaluate things on the ground and evaluate the interest  
12 of going forward.

13 So I would encourage you to look at the  
14 rules from a perspective of removing authority from  
15 D.C., not into a vacuum, but into your front-line folks  
16 who have the relationships with counsel and realty  
17 staff. I think they have a much better understanding  
18 of how things work than someone who has had their  
19 authority stovepiped up to them in D.C. That didn't  
20 work under the Bush administration, and this feels like  
21 a renewed effort to centralize responsibility and slow  
22 down trust transfers.

23 With respect to the current practice, I  
24 would offer just a couple of observations on recent  
25 developments. If you want to focus on some real

1 functional pieces, I echo the effort Mr. Dossett spoke  
2 to about addressing categorical exclusions from NEPA.  
3 That would be enormously helpful. The NEPA process is  
4 expensive and time limited. That would be one piece.

5 Another thing I'd like you to look at is  
6 the 151 rights require that, upon application, the  
7 Department shall issue a notice. It is called notice  
8 to taxing authorities. Okay. Shall. What you need to  
9 demonstrate, really, is a resolution and a deed.  
10 That's how it used to work. We have got a deed. We  
11 have a resolution.

12 What's happened now is the agencies have  
13 set up -- I don't believe this to be true with the  
14 Minnesota agency, but I've seen agencies develop an  
15 internal policy of what they think is required for a  
16 complete application before they will take action on  
17 the application. And it is a very interesting setup,  
18 because there's nothing to appeal if there's not a  
19 complete application because there isn't a federal  
20 action that's been requested.

21 So if I object to the Miami Indians  
22 requiring a survey for a parcel of land that is a  
23 quarter of a quarter, I don't have the ability to  
24 appeal that because they won't acknowledge that there's  
25 an application pending.

1                   So clarifying what triggers the  
2 beginning of an application is essential. And if you  
3 read the bare language and provide authority to your  
4 agencies that, upon receipt of an application, it  
5 demonstrates a request by a tribe, and marketable  
6 title, that application is live. It is the only way  
7 tribes can address additional regulatory burdens  
8 agencies are putting on the application process that  
9 are not required by regulations.

10                   Another example here in this region, and  
11 I think others, is the legal description review  
12 process. Now, very helpful. I get it. You know, it  
13 is to uncover issues. But it isn't a marketable title  
14 issue. It is a total acreage. Is it encumbered by an  
15 easement? And the BLM has been a required prestep to  
16 review the legal description of the land applied for  
17 before the notice will be issued.

18                   Now that might sound okay in practice.  
19 But if the BLM doesn't have the resources to process  
20 those as quickly as they would like to -- and sometimes  
21 legal description reviews are taking eight, ten, twelve  
22 months. Now a whole fee-to-trust application six years  
23 ago used to take me twelve months from beginning to  
24 end.

25                   We don't even have a notice to taxing

1 authorities because the LDR process has been placed as  
2 an acquisition prerequisite. That can't stand. I'm  
3 all for legal description review. I understand the  
4 Department of the Interior needs to know exactly what  
5 the legal description is that they are requiring.  
6 There may be a discrepancy in acreage. They may find  
7 an unrecorded easement, whatever. They do a good job.

8                   It is not an application requirement.  
9 We need to get the applications moving. The Department  
10 of the Interior, by imposing the LDR process has,  
11 roughly, doubled the time for fee-to-trust applications  
12 to process, simply by waiting. That's not the agency's  
13 fault. Okay.

14                   One other item that I would -- actually,  
15 two other items that I would offer. Looking for  
16 solutions at how land issues, generally, can be  
17 improved, I would ask you to consider and would like to  
18 make a record of two matters.

19                   Number one is tribes who have been  
20 actively engaged in the Indian Land Consolidation Act  
21 had liens on those properties by using money to acquire  
22 fractionated interest on their reservation. I was at a  
23 consultation a year and a half ago with Mike Black and  
24 Larry Roberts where the Ilka (phonetic) lien waiver  
25 decision was, apparently, on the desk ready to be

1 signed. We've been waiting 18 months. That's a real  
2 impact for tribes that would like to have those liens  
3 removed from the properties that they have acquired  
4 under the Ilka.

5           One other issue that I think is truly  
6 unique to this region is the issue of the 2415 claims  
7 restriction on trust applications. The 2415 list was a  
8 list of properties that congress determined to extend  
9 indefinitely the statute of limitations by which the  
10 United States could bring a claim for trespass or  
11 improper lien or force-fee title. In this region, it  
12 has been interpreted, strangely, as a cloud on the  
13 tribe's title that has to be removed before the  
14 property can clear a PTO, preliminary title opinion.

15           The claims list has nothing whatever to do  
16 with the tribe's title. It has everything to do with  
17 the preservation of the United States's ability to  
18 bring claims on behalf of former LIT's and land  
19 holders.

20           So for 24 months we have been requesting  
21 direction from the assistant secretary and/or the  
22 Secretary to the regions that simply states 2415 is not  
23 a marketable title issue. There are tribes -- and it  
24 really affects the Chippewa communities in Minnesota  
25 much more than the Sioux communities. There are

1 thousands of acres of on-reservation land that  
2 applications for trust transfer are ready to go, title  
3 is clean, you know, Phase 1 is done. And the  
4 interesting thing is, they have to be put into a  
5 separate category and laid to sit because they will not  
6 clear a PTO.

7           That has a real effect. Every year the  
8 tribe is paying taxes on those properties. And the  
9 2415 list is not a marketable title issue. We would  
10 request specifically that that direction be provided.  
11 It is basic title law.

12           I think that is all I have. I  
13 appreciate your time.

14           Again, leaders and elders, I appreciate  
15 your indulgence. Thank you.

16           MS. JEFFERSON: Hello. My name is Tina  
17 Jefferson. I don't think I need the mike. I better  
18 have it anyway.

19           The reason why I'm standing -- thank  
20 you, first of all, for inviting the members, ordinary  
21 people.

22           The reason why I'm standing before you  
23 today is because I wanted to tell you about some of the  
24 things that my mother told me about what you are  
25 speaking about, the sovereignty, the self-determination

1 the self-reliance, that you eventually want the tribes  
2 to be, the self-Indian determination, which the  
3 government has been working towards for many years.

4           And I want to tell you how all this land  
5 issue, you know, if the government really wants these  
6 issues to be resolved, they should give us our land  
7 back, especially if we are buying it and we want it  
8 back. Put it into trust or put it into our care. That  
9 would be truly sovereignty, because the people hold  
10 sovereignty, not the governments.

11           Since the creation of your 25 CFR and  
12 all the other things, you totally have taken the people  
13 out of the process. We no longer have rights. You  
14 only speak to our governments. That's why I was glad  
15 you gave me this opportunity today to speak to you,  
16 because we do need that voice from the people, because  
17 we are the ones who hold sovereignty, not a government,  
18 not a person saying they are representing us. The  
19 actual people are the ones who are sovereign.

20           We are the ones who live on the land,  
21 survive on the land, and I've noticed that we have  
22 become corporate. We're nothing but corporations  
23 anymore. I don't want to be treated corporate. I like  
24 harvesting off the land. I like living off the land.  
25 I don't want to have to go to work. The education has

1     been forced on our people. It is a good thing for us  
2     to know how to communicate with the rest of the world,  
3     but it is not necessarily our goal as a people.

4                     You know, we want to go back to our  
5     heritage, back to our old ways. We want to be able to  
6     know, you know, how to hunt and trap and survive. And  
7     we're at a conflict right now in all of our  
8     communities. Do we move forward, or do we move  
9     backwards to be those people that we really are?

10                    Our heritage and culture is very  
11    important to us as a people. And land never used to be  
12    something that we had ownership of, but now we have to  
13    have ownership of it. And we need more because, in  
14    order for us to sustain as a people and move forward  
15    and to be a viable force, we need more land for our  
16    people, because our populations are growing. And it  
17    should be that we as a people should be able to decide  
18    what happens on our land.

19                    And our government and all that should  
20    be ours. It shouldn't be something that, if the United  
21    States doesn't want to be our parent anymore -- we  
22    didn't want you to be our parent anyways. We want you  
23    to cut those strings. Let us be who we are. Give us  
24    our land back.

25                    I know President Trump and Zinke have



1    been watching what they have been saying and doing.  
2    They would love for us to have our own lands and be in  
3    control of ourselves. We would love that, too. That  
4    would be the ultimate goal here, for all of us as  
5    people to have our own land and be in control and  
6    decide what happens on those lands.

7                    Because we don't even have the process  
8    of the Bureau or anybody else to help us out anymore.  
9    If I have a problem as an individual member, I don't  
10   have a right. I can't -- the Bureau won't see me. The  
11   council won't hear me. If they don't want to hear what  
12   I want to say, they shut me down and be done with me.  
13   We as a people need to have those rights reinstated.  
14   We need to have -- along with the land and all those  
15   things, those rights.

16                   I remember my grandparent, my great  
17   grandmother, her mother was Lina Campbell, she was the  
18   one who started, the very first person to file for the  
19   docket, which started this whole thing about land. She  
20   told me. I was a young girl when she was still alive.  
21   She told me, someday, this is -- these issues are going  
22   to be yours, to come up and stand, just like I heard a  
23   gentleman saying my grandchildren and children will be  
24   here. I'm here today standing because my grandmother  
25   told me this is your job.

1                   Sometimes we just want to be complacent  
2     and be normal people and not have to deal with this,  
3     because it is not a good thing. No one understands.  
4     Even our own people in the United States don't even  
5     understand their own constitution. And me, as Native,  
6     I have had that shoved down my throat all my life.  
7     Read this. Learn this. Do this. And sometimes us  
8     young people didn't want to be -- I don't want to do  
9     that. I want to be over here with my friends. I don't  
10    want to be an Indian. It is not fun to be an Indian.  
11    There's a lot of work doing that.

12                   So I stand here before you today to tell  
13    you, if you really want us to be -- tell them, tell  
14    Zinke and Trump. If you want us to be independent,  
15    give us our land back. Give us freedom from you. We  
16    don't want to be you either. We don't want to be part  
17    of you. We want to be in control of ourselves. We are  
18    a sovereign nation. We are as people, and we have been  
19    this since this was our mother, Turtle Island. We've  
20    been here thousands of years. We are not going  
21    anywhere. And we want what rightfully belongs to us.

22                   That's where this is going to with these  
23    days and ages, with all of these movements and things  
24    as Native people. Thank goodness for Facebook and  
25    social media. We can finally reach out to each other.

1 We are not millions of miles from each other. We can  
2 speak to each other now. We can be coming together as  
3 a people to tell you and other people that we want to  
4 be us. We want to be who we are, and we want to be in  
5 control of our things. And we think we're better  
6 stewards of ourselves.

7 We have listened to you. We have let  
8 you guide us all these many, many generations now. And  
9 it is just nothing but turmoil to our people. We need  
10 to be able to be in control of ourselves. That is all  
11 I have to say. Thank you.

12 MS. HART: Thank you.

13 MR. SCHERER: Is there anyone else who  
14 would like an opportunity to speak?

15 So we just want to take an opportunity  
16 to address a few of the things that we heard. Part of  
17 a consultation, as opposed to what is a listening  
18 session, is opportunity for some level of dialogue.  
19 That's what we'll try to provide.

20 And, you know, I think, part of the  
21 reason -- I think there were a few comments about the  
22 IRA. And I think part of the reason that we have this  
23 151 process is because the IRA sort of allowed the  
24 Secretary, in his discretion, to acquire, purchase,  
25 et cetera, et cetera. And so part of this, you know,

1 going back to the '80s, '88, '95, what we are trying to  
2 do now is to try to make that discretion a little bit  
3 more transparent for tribes that are going to be  
4 acquiring land, putting money on going through the NEPA  
5 processes, which are often expensive. That's part of  
6 what we are trying to do.

7           And it seems like, largely in this room,  
8 the comments have been pretty uniform. But I can tell  
9 you it is not necessarily what we see both at interior  
10 or in litigation. There are tribes that, you know,  
11 speak to Paula's team, my team, and submit briefings in  
12 court when the United States is defending or  
13 oppositional to a tribe that talk about additional  
14 restrictions on off-reservation acquisitions. So it is  
15 interesting. It is helpful to hear there's sort of a  
16 uniform voice here. But, you know, it is the case that  
17 it is not uniform throughout Indian Country. We see  
18 that both in calls we receive and in filings in court,  
19 where you are seeing slightly different formulations of  
20 these things.

21           Part of the reason we're trying to have  
22 this consultation -- I did hear a point as to what is  
23 the proposal. I think some of this needs to be  
24 seriatim. One of the things we're trying to do is,  
25 because we're hearing different things, trying to get a

1 sense of what is -- what works, what doesn't, what you  
2 are thinking, and then come with a real proposal and  
3 then, you know, have an opportunity for additional  
4 comments at that point. I do appreciate that we didn't  
5 provide you with something exact at this moment, but  
6 that's one of the reasons why we're here. We have  
7 heard different things both at the Department and in  
8 court.

9 MS. HART: Let me just give some  
10 background. I'm the director of the Office of Indian  
11 Gaming, and I basically said I don't think I should be  
12 doing this because I'm the director of gaming and I  
13 kind of wanted to look more like we are taking  
14 non-gaming applications and applying gaming standards.  
15 Yeah, we have 2719, and we follow that. And as far as  
16 I'm concerned, you know, we have been winning in court.

17 But what has happened is, because I'm on  
18 the gaming -- and I can't believe it, but I'm one of  
19 the senior employees at the Department of Interior. I  
20 was here through the last administration and now into  
21 this administration.

22 So what happened is, as meetings came  
23 up, this new administration has called me into the  
24 meetings. And Kyle is right. We are hearing from  
25 tribes where they are coming in and they are

1 complaining. They are asking for the administration to  
2 do things. So what happened is, from January 19th to  
3 August, we were hearing complaints from tribes, groups  
4 of tribes coming in, individual tribal meetings.

5           So based on that, we put together what  
6 we put out here in October. We put together amendments  
7 that we were hearing tribes wanted. So we, basically,  
8 addressed the concerns that were brought to us at the  
9 Department. We put out the October 16th draft with  
10 those questions. And then we heard at NCAI that, you  
11 know, that wasn't the majority of the tribes.

12           When we push -- when I and Kyle push  
13 back with the administration and say, wait a minute, I  
14 don't think this is what tribes -- maybe this one tribe  
15 or maybe this tribe that has come in, but this is not  
16 the majority of tribes, you know, I get back, well,  
17 that's not what we are hearing from tribes. What we  
18 are hearing from Indian Country is this is the change  
19 we need.

20           So I think what we are hearing is you  
21 guys now are speaking up. Now I can go back to the  
22 administration and say, listen, we have had all these  
23 tribal leaders, here's our list. And they were  
24 unanimous. They are opposed to this. For me, it has  
25 given me the opportunity to speak on your behalf

1 because I've now heard you. And now I can go back and  
2 talk to the administration. We've listened. We've  
3 heard them. They may not be able to get up to  
4 Washington and have a face-to-face meeting with you.  
5 But that's what we are doing here. That's why it is so  
6 important to hear everyone speak. And we gave  
7 everybody an opportunity to speak.

8                   We were in Sacramento on Tuesday,  
9 basically, hearing the same thing. It was unanimous  
10 out there that they oppose these.

11                   Now it is up to Kyle and I, who are both  
12 tribal members, to go back. And now when I speak, I'm  
13 speaking on behalf of everybody who has spoke here. I  
14 have stories. I have examples, just like I have  
15 examples for what we put in the regs, what the  
16 amendments were.

17                   Tribes came in. There was a tribe that  
18 came in. The land was in trust. They couldn't get an  
19 agreement with the State. They came back to us and  
20 said, how do we get this land out of trust, because we  
21 can do commercial gaming but we can't do -- so  
22 everybody was like, why would you want this? Why is it  
23 in there? That is because a tribe came forward and put  
24 that to this administration. How do we do that? So  
25 that works its way into the amendment.

1           So there are situations. I'm not going  
2 to name tribes. There are situations that the tribes  
3 have come in and said, wait a minute, we don't want  
4 off-reservation for any reason. These are not coming  
5 from the administration. These are coming from  
6 meetings we are having with individual tribes. And so  
7 we are trying to address them.

8           And I think Kyle and I just had an  
9 agreement on one of the issues that was raised that we  
10 both disagree with the administration's point of view.  
11 And when we push back, we need to be able to say,  
12 listen, we went out to Indian Country and we heard what  
13 was said. So it is very warm. We're not only the  
14 messengers, but we're the worker bees. It is up to us  
15 to make sure that people in Washington know what you  
16 guys are saying.

17           MR. SCHERER: I think, a little further  
18 to that, Paula and I sort of are a unified front on one  
19 particular issue that was drafted. It came from a  
20 tribe.

21           MS. HART: Right.

22           MR. SCHERER: It didn't come from the  
23 administration saying this is what we are doing. It  
24 was a suggestion from a tribe. That's how it sort of  
25 worked its way in there. We have different views on



1     that.  It seems you are sharing those views.

2                     Just to sort of push back or to push  
3     down a little bit on one of these other suggestions  
4     we've heard from, actually, more than one tribe is sort  
5     of this historic connection.  I think, how that came  
6     into play was trying -- this is just sort of something  
7     to think about.  Well, do we really want to be taking  
8     land into trust for a California tribe buying land in  
9     Chicago or a tribe from Florida purchasing land, you  
10    know, in Oregon?  And so that was sort of where this  
11    came from.

12                    It was, you know, sometimes influenced  
13    by, you know, tribes that are in this area that were  
14    trying to purchase land in New York.  And maybe that is  
15    acceptable because there is a connection to home, a  
16    historic homeland.  But do we want to then say it is  
17    also not problematic or it is fine if this tribe is  
18    buying land in Florida?  Those are things animating  
19    some of the language that you are seeing.

20                    In almost all cases, those are things  
21    that are coming from tribes.  That's one of the reasons  
22    we're doing this.  We have some general -- we've heard  
23    things on an individual basis and in groups.

24                    MS. HART:  I think, the other thing we  
25    heard was the centralization.  Why did it happen?  Why

1 did it come forward? Because tribes came in and  
2 complained that it is a black hole. They submitted  
3 their application. It has been sitting at the regions  
4 for, like, 15 -- I think, the length of time  
5 applications have been sitting has been -- I was  
6 actually -- I was appalled, because I think the gaming  
7 applications -- and I'm trying as hard as I can to push  
8 them out. There's been some non-gaming applications  
9 that have been sitting way longer than any of our  
10 gaming applications.

11           So what happened is this administration  
12 came in and, when the tribes came in and complained and  
13 said these applications are sitting way too long, they  
14 said, let's pull everything in so we can see what the  
15 problem is. That's -- I don't know that it is a  
16 permanent thing. I think it was, basically, the same  
17 thing as this. We want to find out where the problem  
18 is, what the problem is. And that's why they pulled it  
19 in.

20           Now, because they said the same thing to  
21 me as director of gaming. They said, what about these  
22 gaming applications? I had to go back and explain to  
23 them, you know, each and every single application,  
24 where it is, what's the holdup, all of that. So I  
25 couldn't answer for the non-gaming applications. And I

1 know they were a long time -- they had a long --  
2 they've been in with the bureau for a long time.

3           So those questions also came to this  
4 administration by the tribes. So I don't -- Kyle is  
5 here on behalf of the administration. I'm here because  
6 I have been included with them, and I understand what  
7 the problem is and why they did what they did. We're  
8 not saying that that's a permanent solution. We're not  
9 saying we are going to keep them in D.C. This  
10 administration is looking at what the problem is. And  
11 I think they'll, hopefully, quickly make a decision on  
12 how to handle that problem.

13           MR. SCHERER: I also should mention, you  
14 know, the MOUs or MOA's have been brought up a few  
15 times. Again, this is something where people came --  
16 tribes, tribal leaders, came and said, well, would it  
17 be faster if we already had an MOU in place? Would  
18 that speed up the process in a way that you wouldn't  
19 have to engage in all the type of sort of other  
20 criteria that is sometimes used in these decisions? I  
21 think the answer was, yes. If there's broad agreement  
22 with the community or county, that is a way to move  
23 that application more quickly. But it was not meant as  
24 a requirement.

25           And, certainly, there are realistic bad

1 relations, whether those are sort of sociopolitical or  
2 just pure racism, that might be an issue. We'd like to  
3 know that as well. I think a really informative moment  
4 for me yesterday was some of these very specific  
5 land-into-trust acquisitions that this particular city  
6 will not support for this reason. Or there were all  
7 these granular things that do need to be taken on an  
8 individual basis.

9 MS. HART: I think, in that respect,  
10 when that was brought up, maybe we should have this MOU  
11 provision in there, I pushed back. I said, wait a  
12 minute, this is absolutely going to be unacceptable in  
13 Indian Country, because this is allowing the local  
14 communities to, basically, extort from the tribes.

15 And then they pushed back and said,  
16 well, Paula, what do you think?

17 I said, if we have to have this in here,  
18 because I'm not going to win the argument, then at  
19 least allow for the tribes to be able to tell us that  
20 they're racist. And I said, if that happens and I have  
21 a document that says they're racist or if you have a  
22 county like San Diego that has passed the law in that  
23 county that they are just outright opposing any gaming  
24 acquisition or any acquisition by an Indian tribe, then  
25 we have to weigh that heavily so that that application

1 is up front.

2                   And the tribes, right now, there's not  
3 a -- I never see an application where -- I'm talking  
4 about the gaming ones -- where the tribe has come in  
5 and put in writing that this is just -- they're all  
6 just racist. So I said -- when I pushed back, I said,  
7 okay, then, if you are going to make them do this, then  
8 we also have to allow the tribes to just come right in  
9 and say they're racist and we accept it and that  
10 outweighs everything else.

11                   So if you look at our draft, that is --  
12 it is on our website, what we put out there. You'll  
13 see, if you have it, but if you don't, you can explain  
14 why. And I said, as far as the gaming ones goes, we're  
15 going to weigh that very heavily. And I can -- we see  
16 examples now of that.

17                   But this is all things that have been  
18 brought to us, and it was a reaction and how we wanted  
19 to respond to the tribes that have come in. Now, we're  
20 almost a year into this administration. This  
21 administration has met with a lot of tribes, but not  
22 nearly all of the tribes. And they have taken those  
23 comments that they've heard by tribes coming in, and  
24 they've tried to say, okay, maybe this needs to be  
25 done.

1 MR. SCHERER: We're also not at a point  
2 where it is sort of a proposed rule format, for that  
3 reason, that we haven't had an opportunity to engage in  
4 consultations. I appreciate it is not in a proposed  
5 format. We are sort of taking a pulse of where --

6 MS. HART: We did put something out. We  
7 listened. You guys didn't like it. We pulled it back.  
8 We are now hearing that we need to have consultation in  
9 the Great Plains region, other regions. Sacramento has  
10 all the California tribes. Well, the Southern  
11 California tribes couldn't make it up to Sacramento, so  
12 we may need to do another one in Southern California.

13 So these are the things that we're  
14 taking back and that we're going to make our  
15 suggestions and say, okay, this is what we heard in  
16 Indian Country. But it does help me when I'm pushing  
17 back to say, listen, I was there and I listened, this  
18 is what the tribes say.

19 Prairie Island is a perfect example. We  
20 absolutely can use that to say to this administration,  
21 how is it going to work here? Those are things that  
22 they want to hear.

23 I will tell you we did get -- it was  
24 local communities. In one case, there were about 3,000  
25 letters that came in all opposing a gaming acquisition.

1 It came in after the fact and everything. We had made  
2 our decision. This administration was reviewing all of  
3 the decisions. They looked at it. They called me in.  
4 They said, Paula, we understand there's 3,000  
5 signatures opposing this. I want you to take a look at  
6 them and come back.

7           So I had my staff look through  
8 everything. We did a chart. We came back, and I said  
9 to him, I said, okay, Mr. Cason, in this case, I went  
10 through all of them. 90 percent said we don't want to  
11 live next to an Indian. How do you want me to weigh  
12 that?

13           And he looked at me, and he was like,  
14 that's the reason?

15           I said yes. I said me and this person  
16 over here, we could live on both side of you, and you  
17 wouldn't know which one of us was Native. But, yet,  
18 you have all of these letters that say we don't want to  
19 live next to Natives.

20           He said, well, Why do you think that is?

21           I said, ignorance.

22           And he said, I think it is outright  
23 racist.

24           I said, well, I think that's where  
25 racism comes from, ignorance. I said, okay, so how am

1 I supposed to weigh this? You tell me you think it is  
2 really important to look at these letters of  
3 opposition. How do you want to weigh these?

4 He said, well, we can't put weight on  
5 racism. So that was it, end of story.

6 But there was nothing in the application  
7 that said this is a racist community. There was  
8 nothing in the application. But if those people  
9 wouldn't have written in -- and that's what the letters  
10 said, they didn't want to live near Indians.

11 So we said, how do we get it in the  
12 application? How do we allow the tribes to say what is  
13 actually happening? So that's just one example. But  
14 we do -- we are pushing back. I do need to hear from  
15 you. I need to be able to say this is what's  
16 happening.

17 MR. SCHERER: The Prairie Island case  
18 was sort of informative and something we heard quite a  
19 bit in California, as well. Do we need, you know, a  
20 different category of off-reservation acquisitions for  
21 tribes that are landless or tribes that are bounded in  
22 a way, you know, where for historic reasons or whatnot,  
23 there's something?

24 You know, at the last consultation, it  
25 was a non-profit organization that purchased all of the



1 land around a particular rancheria, so now everything  
2 is off-reservation. Things like that are informative  
3 and helpful and things that we can take back and say it  
4 needs work.

5 MS. HART: If you look at the 151 regs  
6 as they are, that information doesn't contain -- I hear  
7 it. I have heard it all my years in my position. But  
8 this administration now has come in, and they are  
9 wanting to hear what it is, what is not being said.  
10 They're also listening to the tribes that come in and  
11 sit in front of them and say this is the case. It may  
12 not be the case across Indian Country.

13 And so I felt like the conversation was  
14 good, because now we have been out in Indian Country.  
15 We have stories we can come back and say, under this  
16 administration, this is what we did and this is what we  
17 heard.

18 MR. SCHERER: On that note, there is  
19 additional time to submit comments. In the dear tribal  
20 leaders letter, I believe it is February 28. There is  
21 an opportunity, if you want to take this back to your  
22 own communities. Or if you know there are other  
23 communities that weren't able to participate at this  
24 point, please feel free to submit those comments.

25 We have taken seriously the comments

1 that we maybe need additional consultation on some  
2 things.

3 Thank you very much for coming in.  
4 Thanks to Annette and the regional directors who are  
5 here, as well. Thank you very much.

6 (Whereupon, the TRANSCRIPT OF  
7 PROCEEDINGS was concluded at 12:45 p.m.)

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1 STATE OF MINNESOTA )  
COUNTY OF ANOKA )ss.  
2 CERTIFICATE

3 BE IT KNOWN that I, Julie A. Brooks, took the  
foregoing TRANSCRIPT OF PROCEEDINGS;  
4

5 That the foregoing TRANSCRIPT OF PROCEEDINGS is a  
true record of the testimony given;

6 That I am not related to any of the parties  
hereto, nor an employee of them, nor interested in the  
7 outcome of the action;

8 That the cost of the original has been charged to  
the party who noticed the TRANSCRIPT OF PROCEEDINGS,  
9 and that all parties who ordered copies have been  
charged at the same rate for such copies;  
10

11 WITNESS MY HAND AND SEAL this 18th day of January,  
2018.

12

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Julie Brooks, Notary Public, RPR

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